13—89

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 131.

PHILADELPHIA BAR ASSOCIATION

ELLIS GRIFFITH, APPELLANT,

vs.

ALEXIS GODEY AND C. S. WILLIAMS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED OCTOBER 18, 1881

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a UNITED STATES OF AMERICA, *ss*:

To Alexis Godey and C. S. Williams, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held in the District of Columbia, on the second Monday of October, A. D. 1881, pursuant to *a an* order allowing an appeal from the final decree of the circuit court of the United States in and for the district of California, in the cause wherein Ellis Griffith is appellant and Alexis Godey and C. S. Williams are appellees, to show cause, if any there be, why the said decree in the said order mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Lorenzo Sawyer, judge of the U. S. circuit court in and for the district of California, this 10th day of September, A. D. 1881, and of the Independence of the United States the 106th.

LORENZO SAWYER,
U. S. Circuit Judge, Ninth Judicial Circuit.

b [Endorsed:] 1201. United States Supreme Court. Ellis Griffith, appellant, *vs.* Alexis Godey and C. S. Williams, appellees. Citation. Service of a copy of the within citation is hereby acknowledged, this 10th day of September, A. D. 1881. Johnson & Johnson, att'ys for def't, C. S. Williams. Moore, Laine, Delmas & Leib, att'ys for def't, Godey. Filed Sept. 12, 1881. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

1 *Subpœna.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, District of California. In Equity.

The President of the United States of America, Greeting, to Alexis Smith:

You are hereby commanded that you be and appear in said circuit court of the United States aforesaid, at the court-room, in San Francisco, on the first Monday of March, A. D. 1874, to answer a bill of complaint exhibited against you in said court by Ellis Griffith, who is a subject of the Queen of the United Kingdom of Great Britain and Ireland, and to do and receive what the said court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness the Honorable N. Clifford, Senior Associate *Chief* Justice of the Supreme Court of the United States, this 19th day of January, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the 98th.

[SEAL.] L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *Dep. Clk.*

2 *Memorandum Pursuant to Rule* 12 *Supreme Court U. S.*

You are hereby required to enter your appearance in the above suit on or before the first Monday of March next, at the clerk's office of said court, pursuant to said bill; otherwise the said bill will be taken *pro confesso*.

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *Dep. Clk.*

(Endorsed.)

UNITED STATES MARSHAL'S OFFICE,
DISTRICT OF CALIFORNIA, *January 19th*, 1874.

At the request of the plaintiff, and being satisfied that it is expedient, I hereby especially authorize J. W. Short to serve the within subpœna.

E. P. MARSELLUS,
U. S. Marshal.

U. S. MARSHAL'S OFFICE,
DISTRICT OF CALIFORNIA, *January 22d, A. D.* 1874.

I hereby certify that I received the within subpœna on the 19th day of January, A. D. 1874, and personally served the same on the 22d day of January, A. D. 1874, by delivering to and leaving with Alexis Godey, the defendant named therein, personally, at his (the defendant's) residence in Kern county in said district, a copy thereof.

E. P. MARSELLUS,
U. S. Marshal,
By J. W. SHORT,
Special Deputy Marshal.

Mil-age	$16	
Service	1	20
	17	20
W. & F. charges		50
	17	70

Filed on return, 26 Jan'y, 1874.

L. S. B. SAWYER, *Clk*,
By J. F. O'BEIRNE, *Dp'y Clk.*

Subpœna.

3 UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, District of California. In Equity.

The President of the United States of America, Greeting, to C. L. Williams:

You are hereby commanded that you be and appear in said cir-

cuit court of the United States, aforesaid, at the court-room, in San Francisco, on the first Monday of March, A. D. 1874, to answer a bill of complaint exhibited against you in said court by Ellis Griffith, who is a subject of the Queen of the United Kingdom of Great Britain & Ireland, and to do and receive what the said court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 19th day of January, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the 98th.

[SEAL.]

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *Dep. Clk.*

4 *Memorandum Pursuant to Rule* 12 *Supreme Court U. S.*

You are hereby required to enter your appearance in the above suit on or before the first Monday of March next, at the clerk's office of said court, pursuant to said bill; otherwise the said bill will be taken *pro confesso*.

L. S. B. SAWYER, *Clerk*.
By J. F. O'BEIRNE, *Dep. Clk.*

(Endorsed.)

U. S. MARSHAL'S OFFICE,
DISTRICT OF CALIFORNIA, *January* 17*th*, 1874.

At the request of the plaintiff, and being satisfied that it is expedient, I hereby especially authorize M. M. Henderson to serve the within subpœna.

E. P. MARSELLUS,
U. S. Marshal.

U. S. MARSHAL'S OFFICE,
DISTRICT OF CALIFORNIA, *February* 2*d*, 1874.

I hereby certify that I received the within subpœna on the 19th of January, A. D. 1874, and personally served the same on the 31st day of January, A. D. 1874, by delivering to and leaving with C. S. Williams, the defendant herein named, personally, at his residence in Saticoy township, county of Ventura, State of California, a copy thereof.

E. P. MARSELLUS,
U. S. Marshal,
By M. M. HENDERSON,
Special Deputy Marshal.

Fees—Mileage, 22 miles	$6 60
Service & copy	2
	$8 60

Filed February 6, 1874.

L. S. B. SAWYER, *Clk*,
By J. F. O'BEIRNE, *Dep. Clk.*

5 *Bill in Equity.*

Circuit Court of the United States, District of California.

ELLIS GRIFFITH
vs.
ALEXIS GODEY and C. S. WILLIAMS. } In Equity.

To the judges of the circuit court of the United States for the district of California:

Ellis Griffith, of Murray township, Alameda county, in the State of California, a subject of Her Majesty Victoria, the Queen of the United Kingdom of Great Britain and Ireland, brings this his bill against Alexis Godey, of Kern county, in said California, a citizen of the State of California, and against C. S. Williams, of Ventura county, in said California, and thereupon your orator complains and says: That John G. Griffith, late of Kern county, in the said State of California, was in his lifetime a copartner with your orator in the business of cattle raising, and that the partnership property of your orator and said John G. at the time of the death of said John G., hereinafter mentioned, consisted of a certain rancho or tract of land situate in said county of Kern, containing about one hundred and sixty (160) acres, and known as the "Seneguita," together
6 with about four hundred (400) head of horses, about four hundred (400) head of cattle, about twelve (12) head of goats, and certain other personal property, of the value altogether at that time of at least fifteen thousand dollars ($15,000) in lawful money.

And your orator further shows that on or about the 21st day of May, A. D. 1870, the said John G. departed this life intestate and without issue, leaving surviving him two brothers, one of whom is your orator, and the other Morris Griffith, and who are the only surviving next of kin and only heirs-at-law of said John G., and the only persons entitled to share as distributees or otherwise in his estate.

And your orator further shows that after the death of the said intestate, to wit, in the month of July, 1870, the said defendant Godey was appointed by the probate court of Kern county aforesaid special administrator of the estate of said John G. Griffith, and qualified as such; and afterwards, to wit, in the month of August, 1870, having resigned his trust as such special administrator, took out letters of administration on said estate and qualified as administrator thereof, and thereupon became and acted as such administrator ever after until on or about the 12th day of November, A. D. 1872.

And your orator further shows that on or about the 9th day of August, 1870, being thereto persuaded by said Godey, he
7 entrusted to said Godey the management of all the said property, and resigned to him both your orator's rights as copartner as aforesaid and as brother and heir-at-law of said intestate to manage and settle the same, to the end that said Godey might

as administrator as aforesaid settle the estate of said intestate, and as trustee for your orator wind up the affairs of said partnership.

And your orator further shows that said Godey, both before and after his appointment as special administrator, and as administrator as aforesaid, at divers times took possession of the property hereinbefore described as the partnership property of your orator and said intestate, and assumed to dispose of, and did sell and dispose of, the same, and receive the proceeds thereof. That on or about the month of June, 1870, said Godey, as your orator is informed and believes, sold forty-four (44) head of cattle, of the value of about thirteen hundred and twenty dollars ($1,320) in gold coin, to one Manuel Marmolejo, and received the money therefor, and has never accounted for the same; and about the same time said Godey sold three (3) head of cattle to one John Funk, for $75, and one cow to one James Crocker, for $25, all in gold coin, and received
8 the money and has never accounted for the same.

And you orator further shows that on or about the 16th day of August, A. D. 1870, the said Godey, assuming to act as administrator as aforesaid, procured the remainder of the personal property aforesaid then undisposed of to be appraised under an order of said probate court. And your orator avers, on information and belief, that the same was appraised at much less than its real value, for the reason that said Godey fraudulently kept from the right and knowledge of the appraisers the most valuable portion of it; and that the value of such property, as then determined by said appraisers, was $3,283.50 *dollars;* while in truth the same was then worth, in actual market value, from $6,000 to $7,000 in gold coin and upwards. And that a large part of the said personal property, and all the land aforesaid, were omitted from the appraisement then made, and from the inventory attached thereto.

And your orator further shows that on or about the 27th day of August, 1870, said Godey sold at auction to defendant S. C. Williams personal property belonging to said partnership, to wit, one hundred and seventy-three (173) head of horses, about one hundred and thirty (130) head of stock, cattle and goats, and the
9 brand of deceased in Kern county, and sundry farming implements, tools, and furniture, for the price of two thousand and seventy-seven and $\frac{50}{100}$ dollars, which was much less than its true value, which, on your orator's information and belief, was from $6,000 to $7,000 in gold coin at the time of the sale.

And your orator further shows, on his information and belief, that the sale made as aforesaid on or about the 27th day of August, 1870, was made with unnecessary haste and without proper advertisement, and that the time and place thereof were not generally known to the people of the neighborhood, and that but one or two bidders were present, and that there was a secret understanding and agreement between said Godey and said Williams that the said Williams should bid in the property sold, and that the subsequent profits to be realized therefrom should be divided between the defendants, all of which your orator avers, on his information and belief, to have been fraudulent, and done with the intent, on the part both of said

Godey and said Williams, to cheat and defraud your orator out of his rights in said property.

And your orator further shows that he is an ignorant and unlettered man, ignorant of the law, and not familiar with the
10 ways of business, and unable to read or write except to a very limited extent; and that, having then confidence in said Godey, he allowed him, the said Godey, to exercise full control over said partnership property, and that on or about the 15th day of July, A. D. 1870, the said Godey, well knowing that the land aforesaid was a part of said partnership property, procured an affidavit to be made purporting to be made by your orator, setting forth that your orator was a citizen of the United States of America, and that he had taken up and occupied the said land for the purposes of grazing and cultivation in accordance with an act of the Legislature of the State of California, approved April 20, 1852, entitled "An act prescribing the mode of maintaining and defending possessory actions on public lands in this State," and of the acts supplemental thereto and amendatory thereof, which affidavit was, as your orator is informed and believes, filed by said Godey in the county court of said Kern county. And your orator further shows that if he made this affidavit he made it in ignorance of its contents and under fraudulent acts of said Godey; but your orator has no recollection of having made the same, and believes, if he did make it, he was under the influence of liquor at the time, and that Godey knew him
11 to be so, and knew that he did not understand said affidavit.

And your orator further shows that he was at the time ignorant of the law and did not know what steps were necessary to make him a citizen of the United States of America, but supposed he was such citizen in consequence of his having made a certain statement in the proper court of said Kern county in the year 1870; which statement he is now advised and believes was only a declaration of his intention to become a citizen of the United States.

And your orator further shows that in the month of September, 1870, being thereto persuaded by said Godey, he executed and delivered to said Godey an instrument in writing purporting to be a conveyance of the rancho aforesaid, and bearing date September 17, 1870, without intending thereby to vest in said Godey any beneficial interest in said rancho, and without any consideration. And your orator did not know the contents of said instrument, but signed it solely at said Godey's request, having then full confidence in him.

And your orator further shows that the land or rancho aforesaid was never inventoried or returned by said Godey as any part of the property of the estate of said intestate or of said partnership; but that after the same had been conveyed as aforesaid to said Godey, to wit, on or about the 7th day of November, A. D. 1870, the
12 defendants, as your orator is informed and believes, fraudulently colluding and confederating with each other for the purpose of cheating and defrauding your orator, as aforesaid, negotiated a sale of all the property which had been as aforesaid sold to said Williams on or about the 27th day of August, 1870, together with the land aforesaid, to Pedro Altube and L. Peres, for the price

of $13,000 in gold coin, which money was then paid over to and received by said defendants and divided equally between them and never accounted for by either of them, nor included by said Godey in any of his accounts rendered as administrator as aforesaid.

And your orator further shows that the said land and the said horses and cattle were worth more together than in any other way, and were worth much less if sold separately, and, as your orator is informed and believes, the defendants knew this, and in making the sale of August 27, aforesaid, fraudulently contrived to sell the said horses and cattle separately from the land for the purpose of more easily buying them in at less than their value.

And your orator further shows that previous to the aforesaid sale to Altube and Peres your orator was driven away from the
13 said rancho, where he has been theretofore residing, and compelled to leave it by said Godey, and did not return thither, and did not learn till long after said sale to Altube and Peres that the same had been made and your orator defrauded as aforesaid.

And your orator further shows that he was an equal partner with the said intestate, and as such entitled to one-half of the partnership property aforesaid, and as brother of the said intestate to one-half of said intestate's interest in said partnership property; that is to say, three-fourths of all the said partnership property which, as aforesaid, came into the possession of said Godey, or to three-fourths of the proceeds of the same, if sold; and that said Godey received said property in trust to pay the debts of said partnership and of said intestate, and to deliver three-fourths of the balance to your orator.

And your orator further shows that on or about the 14th day of May, 1872, the said Godey, assuming to act as administrator as aforesaid, rendered a final account to the said probate court of Kern county in the matter of the estate of said John G. Griffith, deceased, wherefrom it appeared that there then remained in his hands of the property of said partnership the sum of $453.05, and that subsequently a decree of distribution was made by said probate
14 court in the matter of said estate, awarding to your petitioner three-fourths of said sum, to wit, 339\frac{78}{100}$, which your orator has never received. And your orator further shows that said Godey, as such administrator, did not include in any of his accounts as such administrator either the money received by him from the sale of cattle to Marmolejo, Funk, and Crocker, as aforementioned, or with the moneys received from the sale of the land and personal property to Altube and Peres as aforesaid, or any part of it, nor did he charge himself with the value or any part of the value of such cattle, land, and other property, except with what was realized by him from the sale to Williams of August 27, 1870, as aforesaid. And your orator further shows that said Godey has never accounted to your orator for the proceeds of any of the said partnership property, but though requested to do so, and to pay over three-fourths of the net proceeds of the same to your orator, he has failed to do so, and has fraudulently retained the same and converted it to his own use.

And your orator further shows that the said Williams has never paid over to your orator any portion of the money received by him

from the sale to Altube and Peres aforesaid, but has fraudulently retained the same and converted it to his own use.

15 And your orator prays that the defendants may answer the premises, and that the defendant Godey may be decreed to account to your orator for three-fourths of the value of the cattle sold by him to Marmolejo, Funk, and Crocker, as hereinbefore set forth, and to pay over such three-fourths to your orator, as well as the amount of $339.78 distributed to your orator by the decree of the probate court aforementioned; and that defendants may be decreed to pay to your orator three-fourths of the amount by which the sum realized by them from the aforesaid sale to Altube and Peres exceeded the price paid by defendant Williams to defendant Godey at the sale of August 27, 1870, aforesaid; and that defendants may be charged with interest on the sums decreed to your orator from the times when the same were received by the defendants.

And that your orator may have such further or other relief in the premises as the nature of the circumstances of this case may require and to this honorable court may seem meet.

And may it please your honors to grant unto your orator a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the said Alexis Godey and C. S. Williams, defendants, commanding them on

16 a day certain therein to be named, and under a certain penalty, to be and appear in this honorable court, then and there to answer all and singular the premises, and to stand to perform and abide such further order, direction, and decree as may be made against them.

And your orator, as in duty bound, will ever pray, &c.

BARSTOW, STETSON & HOUGHTON,
Solicitors for Complainant.

EDW'D GRAY STETSON,
Of Counsel.

UNITED STATES OF AMERICA, }
District of California, } *ss:*

Ellis Griffith, being duly sworn, deposes and says: That he is the complainant in the foregoing bill named, and has heard read the same, and knows the contents thereof; and that it is true of his own knowledge, except as to those matters which are therein stated to be on his information and belief, and as to those he believes it to be true.

ELLIS GRIFFITH.

Sworn to this —— day of November, A. D. 1873, before me.
L. S. B. SAWYER, *U. S. Com'r.*

(Endorsed:) Filed 7 November, 1873. L. S. B. Sawyer, clerk.

17 *Amended Bill.*

Circuit Court of the United States, District of California.

ELLIS GRIFFITH, Plaintiff,
vs.
ALEXIS GODEY and C. S. WILLIAMS, Defendants. } In Equity.

To the judges of the circuit court of the United States for the district of California:

Ellis Griffith, of Murray township, Alameda county, in the State of California, a subject of Her Majesty Victoria, the Queen of the United Kingdom of Great Britain and Ireland, brings this his amended bill against Alexis Godey, of Kern county, in said California, and against C. S. Williams, of Ventura county, in said California, also a citizen of said California.

And thereupon your orator complains and says, that John G. Griffith, late of Kern county, in the said State of California, was, in his lifetime, an equal copartner with your orator in the business of

18 cattle-raising, and that the partnership property of your orator and said John, at the time of the death of the said John, hereinafter mentioned, consisted of a certain rancho or tract of land, situate in said county of Kern, containing about one hundred and sixty (160) acres, and known as the Seneguita, together with about four hundred (400) head of cattle, about four hundred (400) head of horses, about twelve (12) head of goats, and certain other personal property, of the value altogether at that time of at least fifteen thousand dollars ($15,000) in lawful money.

And your orator further shows that, on or about the 21st day of May, A. D. 1870, the said John departed this life, intestate and without issue, leaving surviving him two brothers, one of whom is your orator, and the other Morris Griffith, and who are the only surviving next of kin and only heirs-at-law of said John, and the only persons entitled to share as distributees, or otherwise, in his estate; and that the said Morris was, at the time of the commencement of this suit, a subject of Her Majesty Victoria, aforesaid, and refused to join as a party plaintiff in this suit, and cannot be joined as a party defendant therein without thereby ousting the jurisdiction of this court.

And your orator further shows that after the death of the said

19 intestate, to wit, on or about the 19th day of July, 1870, the said defendant Godey, in the proceedings of the probate court of said Kern county, in the matter of the estate of said John G. Griffith, deceased, was appointed by the said probate court, special administrator of the estate of said John, and qualified and acted as such, and afterwards, to wit, on or about the 11th day of August, 1870, having resigned his trust as such special administrator, took out letters of administration on said estate, and qualified as administrator thereof, and thereafter acted as such administrator until on or about the 12th day of November, A. D. 1872.

And that the interest of your orator in said partnership property, as aforesaid, viz., one-half as partner and one-fourth as distributee,

is stated and appears fully and clearly of record in the aforesaid proceedings of the probate court of Kern county.

And your orator further shows that he is, and at all the times herein mentioned was, an ignorant and unlettered man, and not of strong mind, ignorant of the law, and unfamiliar with the ways of business, and unable to read or write, except to a very limited extent; of all of which facts both defendants had, at all the times herein mentioned, full notice and knowledge. And that soon
20 after the death of the said John, as aforesaid, your orator being thereto persuaded by said Godey, and having then confidence in him, entrusted to him the management of all the said property, to the end that the said Godey might, as administrator as aforesaid, settle the estate of said intestate, and, as trustee for your orator, wind up the affairs of said partnership, of which trust and of your orator's interest in said property, as partner, and otherwise, as aforesaid, both defendants, at all the times herein mentioned, had full notice and knowledge.

And your orator further shows, on his information and belief, that at some time in the summer of 1870, the defendants entered into a conspiracy with each other to cheat and defraud your orator out of his rights in the said property, and convert the same to their own uses, and share the proceeds thereof between themselves.

And your orator further shows that said Godey, at divers times, both before and after his appointment as special administrator and as administrator as aforesaid, having taken possession of the personal property of the partnership aforesaid, sold a portion of the same and received the proceeds thereof in the manner following:

First. In or about the month of June, 1870, said Godey, as
21 your orator is informed and belives, sold forty-four (44) head of said cattle, of the value of at least thirteen hundred and twenty dollars ($1,320), in gold coin, to one Manuel Marmolejo, and received the price therefor, and has never accounted for the same.

Second. About the same time said Godey sold three (3) of said cattle to one John Funk for seventy-five dollars ($75), and one (1) cow to one James Crocker for twenty-five dollars ($25), all in gold coin, and received the money therefor, and has never accounted for the same.

Third. On or about the 16th day of August, 1870, the said Godey, assuming to act as administrator, as aforesaid, procured the remainder of said personal property, then undisposed of, to be appraised under an order of said probate court. And your orator avers, on information and belief, that the same was appraised at much less than its real value, for the reason that said Godey fraudulently kept from the sight and knowledge of the appraisers the most valuable portion of it, and that the value of the property so appraised was, as determined by said appraisers, thirty-two hundred eighty-three and $\frac{50}{100}$ dollars ($3,283.50), while in truth the same was then
22 worth in actual market value from six thousand dollars ($6,000) to seven thousand dollars ($7,000) and upwards, in gold coin.

That afterwards, to wit, on or about the 27th day of August, 1870,

said Godey having procured from the said probate court an order of sale of the property so appraised, on the fraudulent pretence that the same was perishable, while in truth it was not so, and said Godey knew it was not so, he, the said Godey, sold at auction to defendant Williams the remainder of said personal property so appraised, as aforesaid, to wit, one hundred and seventy-three (173) head of horses, about one hundred and thirty (130) head of stock cattle and goats, and the brand of said intestate in Kern county, and sundry farming utensils, tools, and furniture for the price of two thousand seventy-seven $\frac{50}{100}$ dollars ($2,077.50), which was much less than its true value, which, on your orator's information and belief, was six thousand dollars ($6,000) in gold coin, and upwards, at the time of the sale. And that the said sale was made with unnecessary haste, and without proper advertisement, and that the fact that it would take place was not generally known to the people of the neighborhood before the time of sale, and that but one or
23 two bidders were present at the sale, and but one or two bids made, and that had the said auction sale been made in a proper manner, and after suitable advertisement for a proper time, much more money would have been realized therefrom.

And your orator further shows that defendant Williams, at the time of said auction sale, well knew that said Godey was selling the property then sold in the capacity of administrator and trustee as aforesaid, and well knew your orator's rights therein as distributee and *cestui que trust* as aforesaid, and well knew that such property was then really worth six thousand dollars ($6,000) and upwards in gold coin, and well knew that the same was not perishable, and would not lose value by delay in selling it, and well knew that said auction sale was made with unnecessary haste and without proper advertisement, and well knew that the people of the neighborhood were not generally informed of the said auction in advance, and well knew that but one or two bidders were present, and but one or two bids were made, and well knew that had the sale been made in a proper manner and after suitable advertisement for a proper time, much more money would have been realized therefrom.

24 And your orator further shows that on or about the 15th day of July, A. D. 1870, the said Godey, well knowing that the land aforesaid was a part of said partnership property, procured an affidavit to be made, purporting to be made by your orator, setting forth that your orator was a citizen of the United States of America, and that he had taken up and occupied the said land for the purpose of grazing and cultivation in accordance with an act of the Legislature of the State of California, approved April 20th, 1852, entitled "An act prescribing the mode of maintaining and defending possessory actions on public lands in this State," and of the acts supplemental thereto and amendatory thereof, which affidavit was, as your orator is informed and believes, filed by said Godey in the county court of said Kern county. And your orator further shows that if he made said affidavit he made it in ignorance of its contents and under fraudulent acts of said Godey; but your orator has no recollection of having made the same, and believes if he did make

it he was under the influence of liquor at the time, and that said Godey knew him to be so, and knew that he (your orator) did not understand said affidavit.

And your orator was at that time ignorant of the law of naturalization, and did not know what proceedings were necessary to make him a citizen of the United States of America, but supposed he was such citizen in consequence of his having made a certain statement in the proper court of said Kern county in the year 1870, which statement he is now advised and believes was only a declaration of his intention to become a citizen of the United States of America.

And your orator further shows that in the month of September, A. D. 1870, being thereto persuaded by said Godey, he executed and delivered to said Godey an instrument in writing purporting to be a conveyance of the rancho aforesaid, and bearing date September 17, 1870, without intending thereby to vest in said Godey any beneficial interest in said rancho, and without any consideration. And your orator did not then know the contents of said instrument, but signed it solely at said Godey's request, having then full confidence in him.

And your orator further shows that afterwards, to wit, on or about the 7th day of November, A. D. 1870, the defendants, as your orator is informed and believes, fraudulently colluding and confederating with each other for the purpose of cheating and defrauding your orator, as aforesaid, negotiated a sale of all the property which had been, as aforesaid, sold *sold* to said Williams, together with the land aforesaid, to Pedro Altube and L. Peres, for the price of thirteen thousand dollars ($13,000) in gold coin, which money was then paid over to and received by said defendants and divided equally between them.

And your orator further shows that the said land, the said horses and cattle, and other personal property, were worth more together than in any other way, and were worth much less if sold separately, and that it was for the interest of all persons entitled to share therein that the same should be sold altogether, which facts your orator avers, on his information and belief, the defendants well knew, and, knowing it, fraudulently contrived to sell the said horses and cattle separately from the said land for the purpose of more easily buying them in at a low price, and that there was a secret understanding and agreement between the defendants that defendant Williams should bid in the personal property sold at auction as aforesaid, and that defendant Godey should get the said land conveyed to him, and that afterwards the said land and personal property should be sold together, and the profits divided between the defendants, all of which, as your orator is informed and believes, was fraudulent, and done with the intent on the part both of said Godey and said Williams to cheat and defraud your orator out of his rights in said property.

And your orator further shows that the property hereinbefore described as partnership property was more than enough to pay all the debts of said partnership, and all the debts of said intestate, and all

proper expenses in connection therewith, and that all such debts, both of said partnership and said intestate, and all such expenses have been paid out of the money accounted for as received by said Godey to said probate court, as herein set forth, and that on or about the 14th day of May, 1872, the said Godey, assuming to act as administrator as aforesaid, rendered a final account to the said probate court of Kern county, in the matter of the estate of said intestate, wherefrom it appeared that there remained in his (said Godey's) hands of the said partnership property, after paying all claims against the same and all expenses of administration, the sum of four hundred and fifty-three $\frac{5}{100}$ dollars ($453.05).

And that subsequently a decree of distribution was made by said probate court in the matter of said estate, awarding to your
28 orator three-fourths of said sum, to wit, three hundred and thirty-nine and $\frac{75}{100}$ dollars (339\frac{75}{100}$).

And your orator further shows that there was no other inventory or appraisement of said property filed in the said probate court than the one hereinbefore mentioned, from which inventory there were omitted the land aforesaid and a large portion of the said personal property, which omission your orator avers to have been intentional on the part of said Godey, and to have been made by him with the intent to cheat and defraud your orator out of his rights in said property.

And your orator further shows that said Godey, as administrator as aforesaid, did not include in any of his accounts as such administrator either the money received by him from the sale of cattle to Marmolejo, Funk, and Crocker, as aforementioned, or with the money received from the sale of the land and personal property to Altube and Peres, as aforesaid, nor any part of it, nor did he charge himself with the value, or any part of the value, of such land and other property, except with the money he received from defendant Williams at the sale of August 27th, 1870, as aforesaid, and four hundred and seventy-five dollars ($475) from other sources, and
29 that none of said property or its proceeds were ever inventoried or returned or accounted for in any way, either to said probate court or to your orator, by either of said defendants, except as aforesaid; which failure to account your orator avers to have been intentional and fraudulent, and done with the intent on the part of both defendants to cheat and defraud your orator out of his rights in said property.

And your orator further shows that the aforesaid auction sale of August 27, 1870, was made without his knowledge and in his absence, and that he did not know the price paid by defendant Williams for the property then sold, as aforesaid, nor know of the fraudulent collusion between the defendants in regard thereto, as herein set forth, until long after the sale to Altube and Peres, aforesaid, and that previous to the sale by defendants to Altube and Peres, as aforesaid, your orator was driven away from the said rancho (where he had been theretofore residing) by said Godey, and did not return thither, and did not learn until long after said sale to Altube and Peres that the same had been made.

And your orator further shows that as partner, as aforesaid, he is entitled to one-half of the said partnership property, and as
30 brother of said intestate, as aforesaid, to one-half of said intestate's interest in said partnership property; that is to say, three-fourths of all said partnership property, or three-fourths of the proceeds thereof, if sold. And that although said defendants have been severally requested to account to your orator for such of the said partnership property as came to their hands, respectively, and to deliver to your orator three-fourths of the same, or of its proceeds, neither of them has ever done so in whole or in part, except as hereinbefore set forth, but that they have fraudulently kept the same, except as aforesaid, and converted it to their own use, respectively.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereinunder written they are required to answer, that is to say:

First. How many cattle and horses were there bearing the
31 brand used by said John G. and Ellis Griffith, in Kern county, California, and belonging to them at the time of said John's death, and how many then belonging to them, but not branded?

Second. How many cattle and horses belonging to John G. Griffith and Ellis Griffith came under your control after the death of said John, and what disposition did you make of them?

Third. How many cattle and horses bearing the brand used by John G. and Ellis Griffith, in Kern county, California, and belonging to them at the time of said John's death, and how many belonging to them, but not branded, remained undisposed of by defendant Godey at the time of the auction sale to defendant Williams aforesaid, and how many did said Williams get by such sale? Did he get any more than those enumerated as sold to him in said Godey's report of the sale to the said probate court?

And your orator prays that the defendants may answer the premises, and that an account may be taken of all the said partnership property which came into the possession of defendants, or either of them, and of the value of the same; and that defendant Wil-
32 liams may be adjudged to have taken the personal property bought by him at auction, as aforesaid, in trust for your orator, to the extent of your orator's interest therein, to wit, three-fourths of the same; and that the difference between the highest value of the personal property, so as aforesaid purchased by defendant Williams, and the price he paid therefor, may be determined, and defendant Williams ordered and decreed to pay three-fourths of such difference, with interest from the time he purchased, as aforesaid, to your orator within such time as to the court shall seem meet.

And that defendant Godey may be adjudged to have taken all the property of said partnership, including the land so as aforesaid conveyed by your orator to him to the extent of your orator's interest therein, to wit, three-fourths of the same, in trust for your orator, and that the highest value thereof (except so much as was accounted for by him to theprobate court, as aforesaid); that is to say, of the cattle sold to Marmolejo, Funk, and Crocker, as aforesaid, and of the said land, and of such of said partnership property as was received by defendant Godey, and not hereinbefore specifically mentioned and described, may be determined, and defendant Godey ordered and decreed to pay to your orator three-
33 fourths of such highest value, with interest from the time the said property was disposed of by him, or otherwise converted to his own use, together with the sum of three hundred thirty-nine $\frac{75}{100}$ dollars ($339\frac{75}{100}$), distributed to your orator by the decree of the probate court aforementioned.

And in case defendant Williams shall fail to pay the sum he may be decreed to pay to your orator within the time to be prescribed by the court, as aforesaid, or in case the court shall not hold defendant Williams liable in this suit, that then defendant Godey may be ordered and decreed to pay to your orator the amount herein sought to be recovered from defendant Williams.

And that your orator may have such further or other relief in the premises as the nature of the circumstances of this case may require, and to this honorable court shall seem meet. And may it please your honors to grant unto your orator two writs of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed respectively to the said Alexis Godey and C. S. Williams, defendants, commanding them severally on a day certain therein to be named, and under a certain penalty, to
34 be and appear in this honorable court, then and there to answer all and singular the premises, and to stand to, perform, and abide such further order, direction, and decree as may be made against them.

And your orator, as in duty bound, will ever pray, &c.

BARSTOW, STETSON & HOUGHTON,
Solicitors for Plaintiff.

EDW'D GRAY STETSON, *of Counsel.*

UNITED STATES OF AMERICA, }
District of California, } *ss:*

Ellis Griffith, being duly sworn, deposes and says that he is the plaintiff in the foregoing amended bill named, and has heard the same read and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated to be on his information and belief, and as to those, he believes it to be true. ELLIS GRIFFITH.

Sworn to, this 19 day of January, A. D. 1874, before me.

JOS. F. O'BEIRNE.
U. S. Comm'r, Cala.

NOTE.—The defendant Alexis Godey is required to answer all the

interrogatories herein, and defendant Williams is required to answer the third interrogatory.

[Endorsed:] Filed January 19, 1874. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep. cl'k.

35 *Demurrer of Def't Williams.*

Circuit Court of the United States, District of California.

ELLIS GRIFFITH Pl'ff, *vs.* ALEXIS GODEY and C. S. WILLIAMS Def'ts.

The demurrer of the defendant C. S. Williams to the amended bill of complaint of the said Ellis Griffith, complainant.

This defendant by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth that the said complainant hath not in and by his said bill made or stated such a case as doth or ought to entitle him to any such discovery or relief as is thereby sought and prayed for, from or against this defendant.

Wherefore this defendant demands the judgment of this honorable court, whether he shall be compelled to make any further
36 or other answer to the said bill, or any of the matters and things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

JOHNSON & JOHNSON,
Solicitors for Def't Williams.

STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

C. S. Williams, being first duly sworn, deposes and says: That he is the defendant interposing the foregoing demurrer, and that the same is not taken for delay, but in good faith, this defendant being advised by his counsel that the said demurrer is well taken.

C. S. WILLIAMS.

Sworn to before me this 25th day of March, A. D. 1874.
L. S. B. SAWYER,
U. S. Com'r, &c.

This is to certify that I have examined the amended bill of complaint of complainant in the foregoing action, and being one of defendant Williams' solicitors, and familiar with the facts and the law in the said case, and having drawn and prepared the foregoing demurrer, I hereby certify that in my opinion the same is well founded in point of law.

JAMES A. JOHNSON,
One of the Solicitors for Def't Williams.

(Endorsed:) Service of a copy of the within demurrer, on this 30th day of March, 1874, is hereby admitted. Barstow, Stetson & Hough-

ton, attorneys for pl'ff. Filed 30th March, 1874. L. S. B. Sawyer, clerk.

37 *Separate Answer of Def't Williams.*

Circuit Court of the United States, District of California.

ELLIS GRIFFITH, Pl'ff, *vs.* ALEXIS GODEY and C. S. WILLIAMS, Def'ts.

The defendant, C. S. Williams, answering plaintiff's amended bill, for himself alone says:

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's amended bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant, answering, saith as follows:

That this defendant had no knowledge as alleged, and yet has no knowledge as to whether plaintiff and John G. Griffith were partners in business, and in the property mentioned in plaintiff's
38 amended bill of complaint, or in any property whatever. Therefore this defendant demands strict proof of all the allegations of the said bill in that regard, or to so much thereof as may affect in any manner this defendant.

That this defendant has no knowledge of the value of the copartnership property of plaintiff and the said John G. Griffith, if any such copartnership ever existed, and, therefore, demands strict proof of the allegations of plaintiff's amended bill of complaint in that regard, to the extent that this defendant may be affected by the said allegations.

This defendant, further answering, denies that he ever at any time, either as alleged by plaintiff or otherwise, had any notice or knowledge that the defendant Godey was acting as trustee for the plaintiff; upon the contrary, he alleges that he never to this day heard of any such trust other than through plaintiff's said bill.

Further answering, this defendant denies that he ever entered into any conspiracy with the said Godey, or contracted with him or bargained with him in any manner for the purpose of defrauding plaintiff of any rights or property whatever; or that he ever bar-
gained, contracted, or traded with the said Godey for the pur-
39 pose, or in such manner as to injure or defraud plaintiff in any manner whatever to the knowledge of this defendant.

Further answering, this defendant denies that the said property alleged to have been appraised on or about the 16th day of August, 1870, was appraised for much less than its value; on the contrary, this defendant alleges, on information and belief, that the said property was fairly appraised, and for its full value. Therefore, on information and belief, this defendant denies that the said property was worth the sum of from $6,000 to $7,000, or any other or greater sum than the sum of 3,233.50.

Further answering, this defendant denies that the said property was not perishable, and on the contrary alleges that the same on account of the barrenness of the range, and the dryness of the season, and general lack of vegetation for feed for stock, was perishable in the highest degree.

Further answering, this defendant denies that said property was sold with unnecessary haste, or without proper notice and advertisement; upon the contrary, this defendant alleges that the time and place of the sale was generally known throughout the neighborhood and country, and that the sale was well attended, and that
40 there were several bidders, but none of whom would give more for the said property than was offered by this defendant, $2,077.50, and that in fact it could not have been sold for any greater sum.

For further answer, this defendant denies that at the time of the said sale to defendant he knew that said Godey was acting in the capacity of trustee for plaintiff, or that he ever knew or ever heard of such trust until he read plaintiff's amended bill of complaint, and further denies that said property was worth $6,000 in gold coin, or any other or greater sum than was paid therefor by this defendant; and further denies that he knew said property was not perishable, or that the same would not lose in value by a delay in selling the same, or that the said sale was not generally and properly advertised, or that the same was not generally and properly attended by the people of the neighborhood.

Upon the contrary, this defendant alleges that said sale was not made with unnecessary haste, and that the same was duly and properly advertised, and the time and place therefor was generally known, and that there were in attendance several bidders, and that
41 the sale was fair, and the property brought all it was then worth.

Further answering, this defendant denies that on or about the 7th day of September, 1870, or at any other time, this defendant and the said Godey fraudulently colluded or confederated with each other to defraud or to cheat the plaintiff. But this defendant admits that he, with said Godey, sold certain property, rancho, and stock to the said Altube and Peres for the sum of $13,000. He, however, alleges as a fact that the said possessory claim of one hundred and sixty acres of land, mentioned in plaintiff's said amended bill of complaint, was in the said sale valued at and sold at and for the price of either $450 or $550, the sum not now being recollected by this defendant, which was its full value.

Further answering, this defendant denies that he had any part or lot, or in any manner contrived to have anything whatever to do or say as to the manner or way in which the said property should be sold at the said auction sale; and denies that he ever had any agreement with the said Godey, or other person, as to how the said property should be sold, or as to who should purchase the same.

And this defendant, further denying, alleges that the said sale to Altube and Peres, for the sum of $13,000, was made long
42 after the said auction sale, and that at the time of the said

auction sale the said sale to Altube and Peres had never been spoken or even thought of by this defendant.

This defendant also denies that there was any secret or any understanding between him and the said Godey that he should buy in the said personal property at the said auction sale, and that the said Godey should get the said land conveyed to him, and that afterwards the whole of said property should be sold together and the profits divided.

Further answering, this defendant denies that any copartnership property, as such owned by plaintiff and the estate of the said John G. Griffith, deceased, ever came into his hands, or that plaintiff ever made any demand on this defendant for any account in respect to any such property, or that he ever had any right to make any such demand.

Answering the third interrogatory in plaintiff's said bill contained, this defendant most respectfully says he is unable to state, never having received any information on the subject, the number of horses or cattle bearing the brand used by John G. Griffith and Ellis Griffith, in Kern county, belonging to them at the time of the death of the said John.

43 This defendant is also unable to state the number not branded and undisposed of at the time of the said acution sale; can answer, however, that his recollection is that there were some calves, perhaps twelve or fifteen, which were not branded.

And further, that he did not get any more than those enumerated as sold to him in the said Godey's report of the sale to the said probate court.

And further answering, this defendant denies all and singular, generally and specifically, all the charges and allegations in plaintiff's said bill contained as to fraud, combinations, confederations, collusions, and to all and every unlawful act charged against this defendant.

Wherefore he demands to be dismissed hence with his costs, and will ever pray, &c., &c.

JOHNSON & JOHNSON,
Solicitors for Def't Williams.

STATE OF CALIFORNIA,
City and County of San Francisco:

C. S. Williams, being first duly sworn, deposes and says: That he is the defendant interposing the foregoing answer, and that he

44 has heard the same read, and knows the contents thereof, and that the same is true of his own knowledge, except as therein stated on information and belief, and that as to those matters he believes it to be true.

C. S. WILLIAMS.

Sworn to before me, this 25th day of March, A. D. 1874.

L. S. B. SAWYER,
U. S. Com'r.

(Endorsed:) Service of copy of the within answer on this 30th March, 1874, is hereby admitted. Barstow Stetson & Houghton, att'ys for pl'ff. Filed 30 March, 1874. L. S. B. Sawyer, clerk.

45 *Answer of Def't Godey.*

In the Circuit Court of the United States, District of California.

ELLIS GRIFFITH, Plaintiff,
vs.
ALEXIS GODEY and C. S. WILLIAMS, Defendants. } In Equity.

The answer of Alexis Godey, one of the defendants, to the amended bill of complaint of Ellis Griffith, plaintiff.

This defendant, now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, saith:

This defendant admits that plaintiff is a subject of the Queen of the United Kingdom of Great Britain and Ireland, and that said defendants are citizens of California. This defendant is informed by said plaintiff, and on such information admits, that the John
46 G. Griffith mentioned in said bill was, in his lifetime, an equal copartner with plaintiff in the business of cattle-raising. This defendant denies that any part or all of the partnership property of said plaintiff and said John G. Griffith, at the time of the death of said John or theretofore, consisted of any rancho or tract of land whatever, and denies that either the said plaintiff or said John, at the time of the death of said John, either as partners or otherwise, owned or had any interest or title whatever in the land known as the Seneguita, in Kern county, or in any land whatever; but, on the contrary, alleges that the said land known as the Seneguita then was, and ever since has been and yet is, open, unenclosed, and unsurveyed public land of the United States of America, and no person or persons have ever taken any steps to acquire any title to said land, or any part thereof, and until July 15th, 1870, as hereinafter shown, no one had ever taken steps to acquire the right or possession to said land, or any part thereof. This defendant denies that at the time of the death of said John there was belonging to or owned by said John and said plaintiff, or either of them, as partnership property or otherwise, 400 head of cattle, or any greater number than 201 head of cattle, and of which number this defendant avers that 23 head were in possession of and claimed by other
47 parties, and of the remaining number 30 or 40 head were calves; this defendant denies that at the time of the death of the said John there was belonging to or owned by said John, or said plaintiff, or either of them, as partnership property, or otherwise, 400 head of horses, or any greater number than 173 head, or more than eight head of goats, and denies that all of the property their belong-

ing to said John and plaintiff, or either of them, either as partnership property or otherwise, was then worth $15,000, or any greater sum than $2,600; this defendant admits that said John died intestate and without issue on May 21st, 1870, leaving surviving him his two brothers, the said plaintiff and one Morris Griffith, as his only surviving heirs-at-law, and admits that when this action was commenced said Morris was a subject of the Queen of Great Britain, and Ireland.

The defendant admits that he was appointed special administrator of the estate of said John on or about July 19th, 1870, and that he thereupon qualified and acted as such, and that on or about the 11th day of August, 1870, having resigned his trust as such special administrator, he took out letters of administration on said es-
48 tate, and thereupon qualified and acted as such until November 12th, 1872, when this defendant avers he was discharged from his trust as such administrator, and admits that the alleged interest of said plaintiff, to wit, one-half as partner and one-fourth as distributee, appears in said probate proceedings; this defendant avers that he does not know, nor has he ever known, just how wise or lettered a man must be so as not to be an ignorant or unlettered man, nor just how strong his mind must be so as not to be of weak mind, nor just how much of the law he must know so as not to be ignorant of the law, nor just how familiar with the ways of business he must be so as not to be unfamiliar therewith, nor to just what extent he must be able to read and write so as not to be very limited in his ability to read and write, and therefore this defendant is unable to answer the allegations of said bill in such respects, but this defendant avers that said plaintiff both now and at all times in said bill mentioned had some wisdom, was somewhat lettered, had some strength of mind, knew something of law, and was as familiar with the matters of business referred to in said complaint as majority of mankind usually are;
49 and this defendant denies that he now has, or ever had, full or any notice or knowledge to the contrary. This defendant denies that he ever, in any way or manner, persuaded or sought to persuade either said Ellis or Morris to entrust him with the management of any part of said estate or partnership property, to the end that he might settle said estate as administrator, or wind up the affairs of said partnership as trustee, or to any end whatever, or at all; and this defendant avers that he did not wish to administer on said estate, and that the said Ellis and Morris were each afraid to trust, and would not consent for the other to administer thereon; and that both of them frequently urged and solicited this defendant to administer thereon, and wind up the whole affairs of the said estate and alleged partnership, to do any part of which this defendant refused, and it was only upon the repeated and urgent requests and solicitations of said Ellis and Morris, and only as a favor to them, that this defendant finally consented so to do; but this defendant denies that he ever expressly or impliedly agreed to act or did act, as trustee of said Ellis, except in so far as the law
50 would hold him to be such from his acting as administrator of

said estate as aforesaid. This defendant denies that he ever entered into any conspiracy with his co-defendant, or with any person or persons to cheat or defraud plaintiff out of his rights in the said property, or any part thereof, or out of any rights or things whatever, or to convert any of said property, or any portion thereof, to his or their own use, or to show the proceeds thereof, or any part thereof, between themselves, and denies that they ever entered into any conspiracy whatever. This defendant denies that before July 19th, 1870, he had taken possession of any portion of the property belonging to said estate or partnership, except as hereinafter stated. This defenant admits he sold about 44 head of cattle belonging to said partnership in the early part of June, A. D. 1870, to one Manuel Marmolejo, but alleges that he sold them as the agent of said plaintiff, and under the following circumstances, viz: In the early part of June, 1870, shortly after said John's death, said plaintiff requested this defendant to loan him $1,000 for the purpose of paying the funeral expenses and the expenses of the last sickness of said John, and to select sufficient marketable cattle from the cattle belonging to said estate or partnership
51 to sell for $1,000, and to sell them to said Marmolejo and receive the proceeds thereof, and repay himself therewith for said $1,000; thereupon this defendant agreed to such request, and loaned said plaintiff said $1,000, which this defendant is informed and believes, and therefore avers, was used by said plaintiff for the purposes for which he stated he wished to borrow the same as aforesaid; and immediately thereupon this defendant selected all the marketable cattle belonging to said estate or partnership, being 44 head, and sold them to said Marmolejo as aforesaid for the sum of $880; that said 44 head were all the marketable cattle then belonging to said estate or partnership; and defendant denies that they were then worth $1,320, or any sum greater than $880; that this defendant applied said $880 towards paying said $1,000, so loaned by him to said plaintiff as aforesaid, and accounted to said plaintiff for the same. This defendant denies that in the month of June, A. D. 1870, or at any time he sold the three cattle mentioned in said bill to John Funk, but alleges that said plaintiff himself sold said three cattle to said Funk, and directed said Funk to pay the price, $75, to this defendant, which said Funk did, and there-
52 upon said Godey applied said $75 towards paying said $1,000, and duly accounted to said plaintiff for the same. This defendant denies that he ever sold the cow mentioned in said bill to James Crocker, but alleges that said Crocker requested this defendant during his said administration to account to said probate court for $25 for a cow said John had sold him in his lifetime, which this defendant did, and said Crocker thereafter paid him said $25 so accounted for to said probate court, as aforesaid. This defendant admits that on or about the 16th day of August, A. D. 1870, he, as administrator, procured the remainder of said personal property then undisposed of to be appraised under an order of said probate court, but denies that it was appraised at any less than its real value, but on the contrary avers that it was appraised at much more

than its real value, and denies that it was appraised at any less than its real value, but on the contrary avers that it was appraised at much more than its real value, and denies that he fraudulently or otherwise kept from the sight or knowledge of the appraisers the most valuable or any portion of it, and admits that the property so appraised was appraised by said appraisers at $3,283.50, but
53 denies that said property then appraised and afterwards sold to Williams was then worth in actual market value or otherwise from $6,000 to $7,000, or of any greater value than $2,077.50.

This defendant avers that all the property belonging to said estate or partnership at the time of said appraisement was appraised by said appraisers and return made thereof in the inventory, save and except 31 head of horses which had not then come to the knowledge of this defendant, and 23 head of cattle which were then in the adverse possession of a third party, and which could not be obtained except at a greater cost than their value; this defendant admits and avers that on the 16th day of August, A. D. 1870, he procured an order of said probate court to sell the property so appraised, and also the said 31 head of horses, but denies that he obtained said order of sale under any fraudulent pretence whatever, and denies that he obtained such order of sale upon the sole reason that said property was perishable; but avers that he obtained such order on the grounds that the said property, which consisted almost entirely of live stock, would likely decrease in value, would become worse from keeping, and was subject to loss and expense
54 and was perishable. This defendant avers that all of said personal property not live stock consisted of a few articles of old household and kitchen furniture, a few old farming utensils and the like, as hereinafter enumerated, and was not then of any greater value than $77.50. This defendant denies that the property so ordered to be sold was not perishable, and denies that he ever knew it was not so.

Said defendant admits and avers that on the 27th day of August, A. D. 1870, he sold at public auction to said defendant Williams and his partner Funk, said property mentioned in said order of sale, to wit, 173 head of horses, 127 head of cattle, and no more, for $2,000, and one wagon and harness for $65, kitchen furniture for $2.50, plow for $2.50, rifle for $3.00, cross-cut saw for $1.00, 8 goats for $3.00, and one hand saw for fifty cents, making in the aggregate for all the property then belonging to said estate or partnership, excepting said 23 head of cattle out of possession, the sum of $2,077.50, for all of which he duly accounted to said probate court; and denies that such property so sold was then or that said defendant Williams or this defendant knew it to be of the value of $6,000, or of any greater value than $2,077.50, and denies that
55 such sale was made or that said defendant Williams knew it was made with unnecessary haste, or with any haste, or without proper advertisement, or that the fact it would take place was not generally known to the people of the neighborhood before the time of the sale, or that only one or two bids were made, or that had such auction sale been made in any different

manner, or after any different advertisement, or for any different time allowed by law, much more or any more money would have been realized therefrom; but, on the contrary, this defendant avers that $2,077.50 was the full value of said property so sold at the time of said sale, and said sale was made without any haste, and upon at least ten days' notice thereof, posted in three of the most public places in Kern county, as required by law and said order of sale, and the fact that said sale would take place was generally known to the people of the neighborhood before said sale, and two bidders were present at such sale; and the reason there were not more was because there was but little call or desire or demand for said property, as feed for the same was then exceedingly scarce and not sufficient for the stock in the neighborhood, and at such
56 sale there were at least a half dozen bids made for such live stock before the same was sold. And this defendant avers that on the 16th day of August, A. D. 1870, he also obtained another order from said probate court, by which he was authorized to sell at private sale, at the purchaser's risk, the said 23 head of cattle out of possession; and in pursuance thereof, and on the said 27th day of August, A. D. 1870, sold the same to said plaintiff for $450, for which he duly accounted to the said probate court. This defendant admits and avers that on the 15th day of July, A. D. 1870, and before this defendant had anything to do with the administration of said estate, said plaintiff made an affidavit wherein he stated he had taken up and occupied the said land for the purposes of grazing and cultivation, in accordance with an act of the Legislature of the State of California, approved April 20th, 1852, entitled "An act prescribing the mode of maintaining and defending possessory actions on public lands in this State," and of the acts supplemental thereto and amendatory thereof. But defendant denies that he then knew, or has ever known, or yet knows, that said land was then or at any time a part of said partnership property, and denies that
57 it ever was so, and denies that this defendant ever procured or sought to procure in any way, shape, manner, or form the said plaintiff to make said affidavit, and denies that it was ever filed in the county court of Kern county or elsewhere by said Godey, or by his act or procurement, but, on the contrary, avers that it was filed by plaintiff himself, on the day last aforesaid, with the recorder of said Kern county. This defendant denies that said plaintiff made said affidavit in ignorance of its contents or any part thereof, or under any fraudulent act or acts, or any act or acts whatever of said Godey, and avers that when said plaintiff made said affidavit this defendant was not present, but, on his information and belief, denies that said plaintiff was then under the influence of liquor, or under such influence of liquor as would render him incapable of fully understanding the same, and denies that this *plaintiff* defendant ever knew that plaintiff was then under the influence of liquor in any degree whatever, or that he did not understand said affidavit. This defendant avers that he does not know how far plaintiff's knowledge of the naturalization laws ex-

58 tends, and is therefore unable to answer whether or not he knew what acts were necessary to make him a citizen of the United States when he made said affidavit, or what his suppositions were concerning the same, but avers that the declaration of his intention to become a citizen of the United States, mentioned in said bill, was made at the same time said affidavit was made, and before the same officer. This defendant admits and avers that in the month of September, to wit, on the 17th day thereof, said plaintiff made, executed, acknowledged, and delivered to this defendant a grant, bargain and sale, deed of conveyance of and for said land, but denies that it contained the word "rancho," and denies that this defendant, or any one else, in any — or manner, persuaded or sought to persuade in the least the said plaintiff to make, execute, acknowledge, or deliver said deed, and denies that said plaintiff did not, by said deed, intend to vest the beneficial interest and estate in said land in this defendant, and denies that said deed was made without any consideration, and denies that plaintiff did not then fully know the contents of said deed, and denies that plaintiff signed it solely or at all at this defendant's request, or at the request of any one else, but, on the contrary, avers the truth

59 to be that said plaintiff, on and before the day last aforesaid, offered to sell said land to this defendant for $500, which sum far exceeded the value of said land at that time, and on that day said plaintiff informed this defendant that he had been offered $500 by a third party for said land, and that he intended to accept said offer, unless this defendant would purchase said land at that price; and thereupon this defendant, solely for the purpose of preventing having a neighbor who might interfere with his stock range, agreed to buy, and did buy, said land from said plaintiff for the sum of $500 and over, and thereupon said plaintiff, entirely and solely of his own motion and free will, made, executed, acknowledged, and delivered a deed of said land to this defendant, fully understanding the same and the effect thereof, and thereupon this defendant paid plaintiff the said purchase price of $500 and over in twenty-dollar gold pieces.

This defendant admits and avers that he and said Williams and Funk, on or about the 7th day of November, 1870, concluded negotiations for a sale with Pedro Altube and L. Perez, by which said Altube and Perez purchased said live stock so sold to Williams and Funk and this defendant's right, title, and interest only in and to said land so sold by said plaintiff to this defendant, but de-

60 nies that in making or concluding such negotiations, or any of them, this defendant fraudulently, or otherwise, colluded or confederated with said defendant Williams, or any one else, for the purpose of cheating or defrauding said plaintiff in any manner, or for any purpose, or at all; but, on the contrary, this defendant avers that all the facts concerning the making of said sale are as follows, and not otherwise, viz.: On, and for some time previous to, the 7th day of November, A. D. 1870, said Altube and Peres were the owners of over 3,000 head of cattle, and were compelled, as this defendant is informed and believes, to remove them to some other

range from that in which they were then pasturing; that for the purpose of securing such range upon which to remove them, said Altube and Peres, a few days before said 7th day of November, 1870, sought to purchase of this defendant his right, title, and interest in said land, and also in certain other patented lands of this defendant.

That said Altube and Peres did not wish to buy said lands for their intrinsic value, but only to keep from being prevented from bringing their said cattle there, so that they could range for their pasture upon said lands and the public lands of the United States, and other lands thereto adjoining.

61 That this defendant and the said firm of Williams & Funk both were then owners of large herds of cattle, and were then using the ranges near to and adjoining such lands for pasturing such cattle; that said Altube and Peres intended, if they purchased said lands, to bring their said cattle thereon and allow them to range upon the ranges adjoining thereto for their pasture; that in doing so they would necessarily consume the pasture on several thousand acres, to wit, on —— acres, and would greatly interfere with and damage the said range used by this defendant in pasturing his said herd of cattle, and also the said range used by said Williams and Funk in pasturing their said herd of cattle; that, knowing and learning of these facts, said Williams and Funk desired and requested this defendant that if he allowed said Altube and Peres to purchase said lands to compel them to also purchase the said live stock so sold to said Williams and Funk, which were then running on said land so sold to this defendant, never yet having been removed therefrom, and to make said Altube and Peres pay as well for the damages which their, the said Altube's and Peres', said cattle would do to the said respective ranges of this defendant and Williams and Funk as for the value of the said land so sold to this defendant and the live stock so sold to said Williams and Funk;

62 that this defendant thereupon agreed to this request, and thereupon it was agreed between this defendant and said Williams and Funk that the total amount obtained for such damages and the land and stock last aforesaid should be equally divided between them; that in pursuance of this agreement this defendant offered such land and stock to said Altube and Peres for $13,000; that in making such offer neither this defendant nor the said Williams and Funk valued or considered said land last aforesaid to be then worth over $500, nor said stock last aforesaid to be worth over $2,000, but considered that their said damages would in the aggregate amount to $10,000; that said Altube and Peres did not wish to purchase said stock, they then having more stock than they wanted, but finally, and on the 7th day of November, 1870, agreed to said offer, provided this defendant and Williams and Funk would purchase and transfer to the said Altube and Peres a certain possessory claim, owned by one Mackey, adjoining said land last aforesaid. To this this defendant and said Williams and Funk agreed, and accordingly purchased from said Mackey said claim, for which they paid him $500 in gold coin, and thereupon transferred it to said Altube and Peres; that thereupon and on said

Nov'r 7th, 1870, this defendant transferred to said Altube
63 and Peres all his right, title, and interest in said land so sold to this defendant; and the said Williams and Funk transferred to them said live stock so sold to them, and thereupon said Altube and Peres paid this defendant $6,500, and said Williams and Funk $6,500; that in making said purchase, as this defendant believes, and therefore alleges, said Altube and Peres did not value nor consider said live stock so sold to them to be intrinsically worth over $2,000; nor said land so sold to this defendant, and by this defendant to them, to be intrinsically worth over $500; nor the said Mackey claim so transferred to them to be intrinsically worth over $500; but did then consider that the advantage which the range adjoining said lands so purchased by them would be worth to them $10,000. This defendant admits that said land and live stock were worth more together than in any other way, and were worth much less if sold separately; and that if there had been any persons entitled to share therein, it would be for the best interest of such persons that the same should be sold together; but denies that the remainder of said property, or any part thereof, could have been sold to better advantage by selling such remainder with the rest of said property. This defendant denies that either as admin-
64 istrator or trustee, or otherwise, he ever either fraudulently or otherwise contrived to sell, or did sell, said horses and cattle, or any portion thereof, separately from the said land so sold to this defendant for the purpose of more easily or otherwise buying them, or any portion of them, in at a low price or at all; but on the contrary avers that he sold them separately from the land last aforesaid for the sole and only reason that neither said estate nor said partnership had owned or held a shadow of any right, title, or interest in or to the land last aforesaid; and this defendant avers that he never sold, nor purported to sell in any manner, any right, title, or interest in or to the land last aforesaid except in his own name and right to the said Altube and Peres on November 7th, 1870, as aforesaid, as he well had a right to do. This defendant denies that there ever was a secret or any understanding or agreement between this defendant and the said defendant Williams, or between any person or persons whomsoever, that defendant Williams should bid in the personal property sold at auction as aforesaid or any part thereof, or that this defendant should get the land last aforesaid, or any portion thereof, conveyed to him, or that afterwards the land last aforesaid, or any part thereof, and said personal
65 property, or any part thereof, should be sold together, or that any profits should be divided between them; and denies that any such understanding or agreement existed with the intent on the part of this defendant, or any one else, to cheat or defraud said plaintiff out of his rights, or any of them, in said property, or any portion thereof, or at all; but on the contrary avers that said auction sale was made strictly according to law, and in entire good faith on the part of all parties in any way interested therein.

This defendant admits and avers that the property in said bill described as partnership property was more than enough to pay all

the debts of said alleged partnership and of said John, and all proper expenses in connection therewith, and that all such debts and expenses have been paid out of the proceeds of the property accounted for as received by this defendant to said probate court; and that, on or about the 14th day of May, 1872, this defendant, as such administrator, rendered a final account to said probate court in the matter of the estate of said John, wherefrom it appeared that there remained in this defendants' hands of the said partnership property, after paying all claims against the same and all expenses of administration, the sum of $453.05, and that subsequently a decree of distri-
66 bution was made by said probate court in the matter of said estate, decreeing to said plaintiff one-half thereof as partner and one-fourth thereof as heir, making in the aggregate decreed to him as partner and heir the sum of $339.78. This defendant admits that no other inventory or appraisement of said property was ever filed in said probate court than the one hereinbefore referred to, and admits that from such inventory the land last aforesaid was omitted; but avers that it was so omitted because no part of it, or any title or interest therein, ever constituted or was any part of the property of said estate or of said alleged partnership. This defendant denies that a large portion of said personal property was omitted from said inventory, and denies that any portion thereof then belonging to said estate or partnership, or which had ever come to his possession as administrator or trustee, was intentionally on the part of this defendant omitted therefrom, save said 23 head of cattle, which were in the possession of and claimed adversely by a third party, and were therefore considered by said appraisers to be of no value to said estate or partnership, and were for that reason omitted from the said inventory. And this defendant avers that no property which belonged to said estate or partnership, while or since he was such administrator or trustee, or which ever came to his
67 possession as such, was omitted from such inventory, but what was fully accounted for by him to such probate court.

This defendant denies that any omission was made from said inventory with any intent on the part of this defendant, or any one else, to cheat or defraud said plaintiff of his rights, or any of them, in said property, or any part thereof.

This defendant admits and avers that he did not include in any of his accounts as such administrator the said $880 received for said 44 head of cattle sold to Marmolejo, nor the said $75 so received for said 3 head of cattle sold to Funk as aforesaid, for the reason that he never received such money, or any part thereof as administrator, but long prior to the time he was such administrator, and because he received such moneys so received as the proceeds of said 44 head of cattle and said 3 head of cattle belonging to said partnership, upon the payment of such $1,000, upon the order and agreemant of said plaintiff, who then professed and yet professes to have been an equal partner of said John in said cattle, with full power and right to make such order and agreement.

This defendant denies that he did not include in any of his ac-

counts as such administrator the $25 received from said
68 Crocker as aforesaid.

This defendant admits and avers that he did not include in any of his accounts as such administrator any part of the money received from said Altube and Peres as aforesaid, for the property so sold to them as aforesaid, for the reason that at the time of said sale no part of such property, or of any interest therein, belonged to said estate or partnership; and admits and avers that he never charged himself as such administrator with any part of the value of the land last aforesaid, for the reason that no part of said land, or of any title or interest therein, ever belonged to said estate or partnership, but denies that he did not charge himself with the value of the other property, except with the $2,077.50 so received from said Williams, and $475 from other sources, but on the contrary avers that he fully accounted for, and charged himself with, all of the property that ever belonged to said estate or partnership at any time while he was administrator as aforesaid, and avers that $2,552.50 was so accounted for as the proceeds of said property, and denies that none of said property was ever inventoried or accounted for, except as stated in said bill, but on the contrary avers that the same was inventoried and accounted for as hereinbefore stated. This de-
69 fendant denies that he ever intentionally, or that either or both the defendants herein fraudulently, or with any intent on their or either of their parts to cheat or defraud said plaintiff out of his rights, or any of them, in said property, or any part thereof, failed to account for said property, and its proceeds, or any part thereof, and denies that this defendant, as administrator, failed to account to said probate court for the whole of said property which belonged to said estate or partnership at any time while he was such administrator and its proceeds. This defendant denies that said auction sale of August 27th, 1870, was made without the knowledge of said plaintiff, or while he was absent from the neighborhood, but on the contrary avers that he well knew of such sale, and was in the immediate neighborhood when it took place, and on the morning of the day of such sale was actually proceeding on horseback to the place of such sale to attend the same in company with this defendant, when his horse threw him and ran away, and thus he was prevented from being at said sale. This defendant denies that said plaintiff did not know the price paid by Williams for the property sold at said
70 sale, but on the contrary this defendant avers that he himself informed said plaintiff on the same day of said sale, and after the same had taken place, that said Williams and Funk had bought such property at such sale and had paid $2,077.50 therefor, and thereupon said plaintiff represented himself as satisfied therewith, and said it was a good sale, and thereupon, and within a day or two thereafter, this defendant sold him said 23 head of cattle out of possession for $450, as aforesaid. This defendant admits and avers that said plaintiff did not know of any fraudulent collusion or any collusion whatever between this defendant and the said Williams, or between this defendant and any other person or persons whomsoever, in regard to such sale or to anything whatever; and this defendant denies

that said plaintiff ever knew or now knows of any such collusion, or that any such collusion ever existed or now exists. This defendant denies that previous to the sale to said Altube and Peres, or at any time, he ever drove or in any way compelled said plaintiff to go away from said land, but on the contrary this defendant avers that said plaintiff, shortly after he sold his said possessory right to said land last aforesaid, on said Sept. 17th, 1870, as aforesaid, departed
of his own free will and accord, and on his own motion,
71 to another portion of the State, for the purpose, as he there
stated to this defendant, of looking after said 23 head of cattle, and of wooing and marrying some girl, the name of whom this defendant cannot now remember, but who, said plaintiff then informed this defendant, was some relative of the person who had the adverse possession of said 23 head of cattle. This defendant denies that said plaintiff is or ever was entitled to three-fourths of said partnership property or to three-fourths of the proceeds thereof; but, on the contrary, avers that he was only entitled to three-fourths of the balance remaining of said proceeds after deducting therefrom all debts of such partnership and expenses of said administration, which three-fourths of such balance amounted to $339.78, and has been paid to, and on July 9th, 1872, was receipted for, by the agent and attorney of said plaintiff. This defendant denies that he has never accounted to said plaintiff for the three-fourths of such partnership property or of its proceeds, but avers that he, on the 9th day of July, 1872, did deliver the three-fourths of such balance, to wit, $339.78, to the order of said plaintiff, to wit, to B. Brundage, whom this defendant avers said plaintiff had theretofore, to wit, on July 22d, 1871, by written
authority constituted his agent and attorney with full power
72 to receive and receipt for the same; and thereupon, on the
said 9th day of July, 1872, said B. Brundage, as the attorney of said plaintiff, receipted to this defendant in writing for said $339.78, as said plaintiff's share of the proceeds of said estate. This defendant denies that either or both of the defendants herein have fraudulently or otherwise kept any portion of said estate or partnership property or its proceeds, or have converted any portion thereof to their or either of their own use; but, on the contrary, this defendant avers that he has accounted for and paid over the same as hereinbefore stated.

And this defendant, answering the several interrogatories in said bill of complaint as required by the notes annexed thereto, upon his corporal oath answers the same and each of them as follows, viz:

To interrogatory first this defendant answers: That at the death of the said John G. Griffith there were 178 or 179 head of cattle and 175 head of horses in Kern county belonging, as this defendant is informed and believes, to said John G. Griffith and Ellis Griffith, almost all of which were branded with a brand used, as this defendant is informed and believes, by said John G. Griffith and Ellis
Griffith, and the balance of which, being a very few of such
73 number, were not then branded; the exact number of which
that were then so branded and the exact number of which

that were not then so branded this defendant is unable to state, but all of them were branded with such brand at or before the auction sale to said Williams and Funk, hereinbefore mentioned; two of the best of said horses were sold by said plaintiff before there was any administrator appointed upon said estate.

To interrogatory second this defendant answers: That the following number of cattle and horses, which he is informed and believes belonged to said John G. and Ellis Griffith, came to his possession after the death of said John G., viz: 173 head of horses, which came to his possession as administrator of the estate of said John, and they were sold by him, as such administrator, at public auction to Williams and Funk, on the 27th day of August, 1870, under an order of the probate court of said Kern county; also 127 head of cattle, including 30 or 40 head of calves, which came to his possession as such administrator, and which were sold by him as such under such order on the 27 day of August, A. D. 1870; no other cattle or horses ever came to his possession as such administrator; in or about the first week of June, 1870, however, and before this defendant became administrator, some 44 head of such cattle
74 came to his possession, and he received and took possession thereof, as agent of said plaintiff, to sell the same to one Marmolejo, and apply the proceeds thereof on the payment of a debt of $1,000, then owing by said plaintiff to this defendant, which this defendant then and there did, and applied such proceeds, amounting to $880, towards the payment of said debt; also, some time after the death of said John, but before any administration on such estate, said Ellis and his brother Morris, transferred and conveyed three or four of such cattle to this defendant in payment for and in satisfaction of certain trouble and expense he had been at and labor he had theretofore performed for said Ellis and Morris; no other cattle or horses ever belonging to said John, or to said John and Ellis, ever came under this defendant's control.

To interrogatory third this defendant answers: That there were no cattle or horses bearing the brand used by John G. and Ellis Griffith in Kern county, California, or belonging to them, or to the said John, at the time of said John's death, whether branded or unbranded, which were not disposed of by this defendant to said Williams at the time of the said auction sale, or which had not theretofore been disposed of by said plaintiff, as hereinbefore stated, save and except the said 23 head of cattle out of possession, and which were
75 in Santa Barbara county, and sold by this defendant a day or two thereafter to said plaintiff, as hereinbefore stated. Said defendant Williams got at such auction sale 173 head of horses and 127 head of cattle, which 127 head of cattle included 30 or 40 head of calves; but said Williams got such horses and cattle for himself and Funk, as hereinbefore alleged, and did not get any on his private account. He did not get any more cattle or horses, either for himself or for himself and Funk, than what is stated in this defendant's report of such sale to said probate court, to wit, 127 head of cattle and 173 head of horses.

And this defendant, by protestation, not confessing or acknowl-

edging all or any of the matters and things in the said bill of complaint mentioned and contained to be true in such sort, manner, and form as the same are therein set forth and alleged, for a defense to so much and such part of said bill as alleges or seeks to have decreed that the property mentioned in said bill as having been sold at auction sale to defendant Williams on August 27th, 1870, was not at such sale sold for its full value, or that there was fraud in said sale, or that the same was invalid, and insisting upon such defense, says and avers that on the 1st day of the next term of said

76 probate court of said Kern county, after said auction sale, to wit, on Sept. 5th, 1870, this defendant made and filed, in accordance with the statutes of the State of California in such cases made and provided, reference to which is hereby made, and to which this defendant prays he may be allowed to refer as often as he may deem proper, a written return and account of such sale to said probate court, verified by his affidavit, for its approval and confirmation, at which time and place said plaintiff could have objected to such approval or confirmation had he so desired; but said plaintiff made no objection whatever to such approval or confirmation, and thereupon said court heard and examined sufficient evidence as to such sale and the value of the property so sold, *and thereupon said court heard and examined sufficient evidence as to such sale and the value of the property so sold*, and thereupon made and entered an order approving, confirming, and declaring valid said sale.

And this defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said bill of complaint mentioned and contained to be true in such sort, manner, and form as the same are therein set forth and alleged, for a defense to

77 the whole of said bill, and insisting on such defense as a bar thereto, says and avers that on the 11th day of August, A. D. 1871, this defendant, in accordance with the statutes of California in such case made and provided, made and filed in the probate court of the said Kern county, for its approval and allowance, his annual account of his administration of the estate of said John G. Griffith, together with his report of all his proceedings as such administrator, to which the said plaintiff, on the 4th day of September, 1871, filed his exceptions and contested the approval or allowance of the same upon the very same grounds upon which he has brought this action; and thereafter and on the 5th day of March, 1872, said court having heard evidence on the part of said plaintiff and this defendant respectively in relation thereto, allowed and approved the said account and report.

And this defendant submits to the judges of this honorable court that all and every of the matters in the said bill mentioned and complained of are matters which may be tried and determined at law, and with respect to which the said plaintiff is not entitled to any relief from a court of equity; and this defendant hopes he shall have the same benefit of these defences as if he had demurred and pleaded to plaintiff's bill.

78 And this defendant denies all and all manner of unlawful combination, conspiracy, and confederation wherewith he is

by the said bill charged; without this that any other matter, cause, or thing in the said plaintiff's bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

MOORE, LAINE, DELMES & LEIB,
Solicitors for said Def't Godey.

D. M. DELMES,
Of Counsel.

STATE OF CALIFORNIA, } ss:
County of Kern, }

Alexis Godey, being first duly sworn, on his oath states: That he is one of the defendants in the foregoing entitled action; that he has heard read the foregoing his answer, and knows the con-
79 tents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on his information or belief, and as to those matters he believes it to be true.

ALEXIS GODEY.

Submitted and sworn to before me, this 4th day of April, A. D. 1874.

P. T. COLBY,
County Judge, Kern County, Cala.

STATE OF CALIFORNIA, } ss:
County of Kern, }

I, F. W. Craig, county clerk of the county of Kern, State of California, do hereby certify that the Hon. P. T. Colby, by whom the foregoing attestation was made, and whose genuine signature is subscribed thereto, was, at the time of signing the same, and still is, county judge in and for the county of Kern, duly commissioned and sworn, and to whose acts as such full faith and credit are due.

In witness whereof, I have hereunto set my hand and the seal of the said county court, this 4th day of April, A. D. 1874.

[SEAL.]

F. W. CRAIG,
Co. Clerk, Kern Co., Cala.

80 (Endorsed:) Received a copy of the within answer after it had been duly filed, this 15th day of April, A. D. 1874. Barstow, Stetson & Houghton, for pl'ff. Filed 15 April, 1874. L. S. B. Sawyer, clerk. By J. F. O'Beirne, dep. cl'k.

81 *Stipulation with Answering Demurrer of C. S. Williams.*

In Circuit Court of the United States in and for the District of California.

ELLIS GRIFFITH
vs.
ALEXIS GODEY and C. S. WILLIAMS. } In Equity. No. 1201.

It is hereby stipulated by and between the solicitors for plaintiff and the solicitors for the defendant, C. S. Williams, that said Williams have leave to withdraw his demurrer heretofore interposed herein, and that his answer, heretofore filed herein, to plaintiff's amended bill of complaint be taken and accepted as his answer in the cause;

Subject, however, to all exceptions to the sufficiency thereof that could or might otherwise have been made.

JOHNSON & JOHNSON,
Solicitors for Def't Williams.
BARSTOW, STETSON & HOUGHTON,
Solicitors for Pl'ff.

May 2d, 1874.

82 (Endorsed:) Filed 6 May, 1874. L. S. B. Sawyer, clerk.

83 *Exceptions to Answer of Def't Williams.*

Circuit Court of the United States, District of California.

ELLIS GRIFFITH *vs.* ALEXIS GODEY, C. S. WILLIAMS.

Exceptions taken by the said complainant to the insufficient answer of the defendant Williams to the said complainant's bill of complaint.

First. For that the said defendant Williams has not, to the best and utmost of his knowledge, remembrance, information, and belief, answered and set forth whether complainant was not at the time this suit was begun a resident of the State of California, and a subject of the Queen of the United Kingdom of Great Britain and Ireland, nor whether defendants were not citizens of said California at that time, nor whether Morris Griffith, in said bill mentioned, was not at the same time a subject of the said Queen, nor whether John G. Griffith, in said bill mentioned, was not at the time of his death a resident of Kern county, California.

Second. For that the said defendant has not in any manner
84 aforesaid answered and set forth whether John G. Griffith, in said bill mentioned, did not depart this life intestate and without issue, on or about the 21st day of May, A. D. 1870, leaving surviving him two brothers, complainant aforesaid and Morris Griffith aforesaid; nor whether complainant and said Morris were not at said John's death the only surviving next of kin and only heirs-at-law of said John, and the only persons entitled to share as distributees, or otherwise, in his, said John's, estate.

Third. For that the said defendant Williams hath not in any manner aforesaid answered and set forth whether the defendant Godey was not, on or about the 19th day of July, 1870, appointed by the probate court of Kern county, in said California, special administrator of the estate of said John, and acted as such; nor whether the defendant Godey did not afterwards, to wit, on or about the 11th day of August, 1870, take out letters of administration on said estate and qualify as administrator thereof, and thereafter act as such administrator until on or about the 12th day of November, 1872; nor whether the interest of complainant in the property described in the bill of complaint, viz., one-half as partner and one-fourth as distributee, does not fully appear of record in the
85 proceedings of the probate court of said Kern county, in the matter of the estate of said John.

Fourth. For that the said defendant Williams has not in any manner aforesaid answered and set forth whether the complainant is not, and at all times in the bill of complaint mentioned was not, an ignorant and unlettered man, and not of strong mind, and ignorant of the law and unfamiliar with the ways of business, and unable to read or write, except to a very limited extent. Nor whether both defendants had not at all times in said bill mentioned full notice and knowledge of all these facts.

Nor whether, soon after the death of said John, the complainant being thereto persuaded by the defendant Godey, and having then confidence in him, entrusted to him the management of all the said property in the bill of complaint described, to the end that defendant Godey might, as administrator and trustee, as in said bill described, wind up and settle the estate of said John and the partnership affairs of said John and the complainant. Nor whether both defendants had not, at all the times in said bill mentioned, full notice and knowledge of the trusts upon which defendant Godey held said property, and of complainant's interest in the same.

86 Fifth. For that the said defendant Williams has not in any manner aforesaid answered and set forth whether, on or about the 16th day of August, 1870, the said Godey, assuming to act as administrator as aforesaid, did not procure the remainder of the personal property, then undisposed of, mentioned in said bill of complaint, to be appraised under an order of the probate court of said Kern county. Nor whether the same was not thereupon appraised at much less than its real value Nor whether said Godey did not, at the time of such appraisement, fraudulently keep from the sight and knowledge of the appraisers, the most valuable portion of said property.

Sixth. For that the said defendant Williams has not in any manner aforesaid answered and set forth whether on or about the 27th day of August, 1870, said Godey did not, under an order of sale of said probate court, sell the property appraised, as stated in said bill of complaint, for the price of $2,077.50. Nor whether there were but one or two bidders present at the sale, and but one or two bids made. Nor whether there could not have been much more money

realized from the sale if it had been made in a proper manner and after suitable advertisement for a proper time.

Seventh. For that the said defendant Williams has not in
87 any manner aforesaid answered and set forth whether he, at the time of said auction sale, did not well know that defendant Godey was selling the property then sold in the capacity of administrator and trustee, as in said bill of complaint alleged, and did not well know complainant's right therein as distributee and *cestui que trust*.

Eighth. For that the said defendant Williams has not in any manner aforesaid answered and set forth whether on or about the 15th day of July, 1870, defendant Godey, well knowing that the land in the bill of complaint described was a part of the partnership property of complainant and said John, did not procure an affidavit to be made purporting to be made by complainant, setting forth that complainant was a citizen of the United States of America, and other facts as stated in said bill of complaint, and cause said affidavit to be filed in the county court of said Kern county. Nor whether complainant, if he made said affidavit, did not make it in ignorance of its contents and under fraudulent acts of said Godey. Nor whether complainant, if he made the same, was not under the influence of liquor at the time, and known by said Godey to be so, and known by said Godey not to understand said affidavit.
88 Nor whether complainant was not then ignorant of the law of naturalization, and ignorant as to what steps were necessary to make him a citizen of the United States of America, and did not then suppose he was such a citizen in consequence of having made a certain declaration of intention to become a citizen in the proper court of said Kern county in the year 1870.

Ninth. For that the said defendant Williams has not in any manner aforesaid answered and set forth whether in the month of September, 1870, complainant, being thereto persuaded by defendant Godey, did not execute and deliver to said Godey an instrument in writing purporting to be a conveyance of the rancho mentioned in said bill of complaint, and bearing date September 17, 1870, but without intending to vest thereby any beneficial interest in said Godey in said rancho, and without any consideration. Nor whether complainant was not at the time of the execution and delivery of said instrument ignorant of the contents thereof.

Tenth. For that the said defendant Williams has not in any manner aforesaid answered and set forth whether the defendants
89 did not on or about the 7th day of November, 1870, negotiate a sale of all the property which had been sold to said defendant Williams at auction, as set forth in the bill of complaint, together with the land or rancho aforesaid, to Pedro Altube and L. Peres for the price of $13,000 in gold coin, which money was then paid over to and received by said defendants and divided equally between them.

Eleventh. For that the said defendant Williams has not in any manner aforesaid answered and set forth whether the said land or rancho and the horses and cattle and other personal property men-

tioned in the bill of complaint were not worth more together than in any other way, and were worth much less if sold separately. Nor whether it was not for the interest of all persons entitled to share therein that the same should be sold all together. Nor whether both defendants had not at all the times when the same was sold full notice and knowledge of all these facts.

Twelfth. For that the said defendant Williams has not in any manner aforesaid answered and set forth whether the property described in the bill of complaint as partnership property was not more than enough to pay all the debts of the said part-
90 nership and all the debts of the said John and all proper expenses in connection therewith, and that all such debts and expenses have been paid.

Thirteenth. For that the said defendant Williams has not in any manner answered and set forth whether there was any other inventory or appraisement of the property in said bill of complaint described ever filed in the probate court of Kern county, except the inventory and appraisement mentioned in the bill of complaint. Nor whether from the inventory so filed there were not omitted both the land aforesaid and a large part of said personal property. Nor whether such omission was not intentional on the part of said Godey, and made by him with the intent to cheat and defraud complainant out of his rights in said property. Nor whether any of said land and other property was ever accounted for to complainant by defendant Williams. Nor whether the failure so to account was not intentional on the part of said defendant Williams.

Fourteenth. For that the said defendant Williams has not in any manner aforesaid answered and set forth whether the auction sale of August 27, 1870, mentioned in the bill of complaint, was not made without complainant's knowledge, and in com-
91 plainant's absence. Nor whether complainant knew the price paid by defendant Williams for the property then sold, and of the alleged collusion in regard thereto between defendants, as set forth in the bill of complaint, until long after the said sale to Altube and Peres. Nor whether complainant was not, previous to the said sale to Altube and Peres, driven away from said rancho (where he had been theretofore residing) by defendant Godey, and remained absent therefrom, and did not learn of the said sale to Altube and Peres until long after the same had been made.

Fifteenth. For that the said defendant Williams has not in any manner aforesaid answered and set forth whether complainant was not, as partner as aforesaid, entitled to one-half of the property described in the bill of complaint, as partner of said John, and to one-fourth thereof as brother of said John—that is to say, to three-fourths of the whole or its proceeds; nor whether defendants have ever delivered to complainant any portion of said property, except as stated in said bill of complaint.

In all of which particulars the said complainant excepts to the answer of the said defendant Williams as evasive, imper-

92 fect, and insufficient, and humbly prays that the said defendant may be compelled to put in a full and sufficient answer to the said bill of complaint.

BARSTOW, STETSON & HOUGHTON,
Solicitors for Complainant.
EDW'D GRAY STETSON, *Of Counsel.*

(Endorsed:) Service of a copy of the within exceptions, this 25th day of July, A. D. 1874, is admitted. Johnson & Johnson, att'ys for def't Williams.

(Endorsed:) Filed 25 July, 1874. L. S. B. Sawyer, clerk. By J. F. O'Beirne, dep. cl'k.

93 *Exceptions to Answer of Def't Godey.*

Circuit Court of the United States, District of California.

ELLIS GRIFFITH
vs.
ALEXIS GODEY, C. S. WILLIAMS. } In Equity.

Exceptions taken by the said complainant to the insufficient answer of the said defendant Godey to the said complainant's bill of complaint:

First. For that the said defendent Godey has not, to the best and utmost of his knowledge, remembrance, information, and belief, answered and set forth whether complainant was not at all the times in the bill of complaint mentioned an ignorant and unlettered man, and not of strong mind and ignorant of the laws and unfamiliar with the ways of business, and unable to read or write, except to a very limited extent; nor whether both defendants had not at all the said times full notice and knowledge thereof.

In all of which particulars the said complainant excepts to the answer of the said defendant Godey as evasive, imperfect, and
94 insufficient, and humbly prays that the said defendant Godey may be compelled to put in a full and sufficient answer to the said bill of complaint.

BARSTOW, STETSON & HOUGHTON,
Solicitors for Complainant.
EDWARD GRAY STETSON, *Of Counsel.*

(Endorsed:) Filed July 25, 1874. L. S. B. Sawyer, clerk. By J. F. O'Beirne, dep. cl'k.

95 *Stipulation as to Amended Exceptions.*

Circuit Court of the United States, District of California.

ELLIS GRIFFITH
vs.
ALEXIS GODEY *et al.* } In Equity.

It is stipulated that the complainant may amend his exceptions, heretofore filed, to the answer of def't Williams.

JOHNSON & JOHNSON,
August 29, 1874. *Solicitors for Def't Williams.*

(Endorsed:) Filed 3 September, 1874. L. S. B. Sawyer, clerk.

96 *Amendments to Exceptions of Ans. of Def't Williams.*

Circuit Court of the United States, District of California.

ELLIS GRIFFITH, Complainant,
vs.
ALEXIS GODEY *et al.*, Defendants. } In Equity.

Amendments to the exceptions heretofore taken by the above-named complainant to the insufficient answer of the said defendant Williams to the said complainant's bill of complaint.

For that the said defendant Williams has not, to the best and utmost of his knowledge, remembrance, information and belief answered and set forth whether complainant was not in the lifetime of John G. Griffith an equal copartner with him in the business of cattle raising, nor whether the partnership property of complainant and said John, at the time of the death of said John, as set forth in the bill of complaint herein, did not consist of a certain rancho or tract of land situate in the county of Kern, State of California, containing about 160 acres, and known as the Seneguita, together with about 400 head of cattle, about 400 head of horses, about 12
97 head of goats, and certain other personal property, nor whether the value of said property altogether was not at that time at least $15,000 in lawful money.

In all of which particulars the said complainant excepts to the answer of the said defendant Williams as evasive, imperfect, and insufficient, and humbly prays that the said defendant may be compelled to put in a full and sufficient answer to the said bill of complaint.

BARSTOW, STETSON & HOUGHTON,
Solicitors for Compl't.

EDW'D GRAY STETSON,
Of Counsel.

(Endorsed:) Service of a copy of the within amendments, this 29 day of August, 1874, is admitted. Johnson & Johnson, solicitors for def't.

(Endorsed:) Filed 3 September, 1874. L. S. B. Sawyer, clerk.

98 *Order of Court.*

At a stated term of the circuit court of the United States of America for the district of California, held at the court-room thereof, in the city and county of San Francisco, on Wednesday, the first day of October, in the year of our Lord one thousand eight hundred and seventy-nine.

Present: The Honorable Stephen J. Field, circuit justice; the Honorable Lorenzo Sawyer, circuit judge.

ELLIS GRIFFITH, Complainant, *vs.* ALEXIS GODEY *et al.*, Defendants.

The complainant filed his bill of complaint herein, which is hereto

annexed, on the 7th day of November, A. D. 1873. Thereupon subpœnas were issued directed to said defendants in said bill of complaint mentioned, and service thereof made upon said defendants personally prior to the return day thereof. Said subpœnas, with the marshal's return of service thereon endorsed, are hereto annexed.

The defendant, Alexis Godey, appeared herein by Messrs. Moore, Laine, Delmas and Leib, and the defendant, C. S. Williams,
99 by Johnson and Johnson, as his solicitors.

On the 19th day of January, A. D. 1874, complainant filed an amended bill of complaint, which is hereto annexed.

On the 30th day of March, 1874, defendant, C. S. Williams, filed a demurrer to the said amended bill of complaint, which demurrer is hereto annexed, and also on said last named date filed a separate answer to said amended bill, which answer is also hereto annexed.

On the 15th day of April, A. D. 1874, defendant Godey filed his separate answer to said amended bill of complaint, which is hereto annexed.

On the 6th day of May, 1874, a stipulation was filed withdrawing the demurrer of C. S. Williams.

On the 25th day of July, 1874, complainant filed separate exceptions to the answer of defendants Williams and Godey, which exceptions are hereto annexed.

On the 3d day of September, 1874, a stipulation allowing the complainant to amend his exceptions to the answer of defendant Williams, and amendments to said exceptions were filed, and are hereto annexed.

On the 4th day of September, A. D. 1874, an order was made and entered herein in the words and figures following, to wit:

100 At a stated term of the circuit court of the United States of America for the district court of California, held at the court-room, in the city and county of San Francisco, on Wednesday, the 4th day of September, in the year of our Lord one thousand eight hundred and seventy-four.

Present: The Honorable Lorenzo Sawyer, circuit judge.

ELLIS GRIFFITH *vs.* ALEXIS GODEY *et al.*

The exceptions to defendant Godey's answer herein heretofore argued and submitted, having being duly considered, it is ordered that said exceptions be, and the same hereby are, allowed.

(Endorsed:) I hereby certify that the foregoing is a full, true, and correct copy of an original order of court entered in the above-entitled action. Attest my hand and seal of said circuit court, this 1st day of October, A. D. 1879. [Seal.] L. S. B. Sawyer, clerk. By J. F. O'Beirne, deputy clerk.

101 On the 10th day of Sept'r, A. D. 1874, another and further order was made and entered herein, in the words and figures following, to wit:

At a stated term of the circuit court of the United States of Amer-

ica for the district of California, held at the court-room, in the city and county of San Francisco, on Thursday, the 10th day of September, in the year of our Lord one thousand eight hundred and seventy-four.

Present: The Honorable Lorenzo Sawyer, circuit judge.

ELLIS GRIFFITH *vs.* ALEXIS GODEY *et al.*

The exceptions to defendant Williams' answer herein heretofore argued and submitted, having been duly considered, it is now here ordered that said exceptions be, and the same hereby are, allowed with costs.

(Endorsed:) I hereby certify that the foregoing is a full, true, and correct copy of an original order of court entered in the
102 above-entitled action Attest my hand and seal of said circuit court, this 1st day of October, A. D. 1879. [Seal.] L. S. B. Sawyer, clerk. By J. F. O'Beirne, deputy clerk.

103 *Further Answer of Def't Williams.*

In the Circuit Court of the United States, District of California.

ELLIS GRIFFITH *vs.* ALEXIS GODEY and C. S. WILLIAMS.

The further answer of C. S. Williams, one of the defendants in this suit, to complainant's amended bill of complaint:

This defendant, saving and reserving to himself the same benefit of exception to the said amended bill of complaint as by his former answer to such amended bill is saved and reserved, answers and says:

This defendant, further answering as to the matters of the 1st exception taken to his former answer, says that he admits that complainant and Morris Griffith were at the time of the commencement of this suit residents of the State of California and subjects of the "Queen of the United Kingdom of Great Britain and Ireland," and that defendants were then citizens of the State of California, and that John G. Griffith was at the time of his death a resident of Kern county, in said State.

104 This defendant, further answering as to the matters of the amendments to exceptions when to his former answer, admits, on information and belief, that complainant and John G. Griffith at the time of his death were equal copartners in the business of cattle raising, but, on like information and belief, denies that the said rancho or tract of land in said bill mentioned was a part of said partnership property, and avers that he does not know, has never been informed save by complainant's said bill, and cannot set forth as to his belief or otherwise what constituted said partnership property, or whether or not there then were belonging thereto 400 head of cattle, more or less, or 400 head of horses, or 12 head of goats, or certain other personal property, or whether or not said partnership property was worth $15,000.00 in lawful money or what was the value thereof.

And this defendant, in further answer as to the matters of the 2d exception where to his former answer, says he believes it to be true that on or about May 21st, 1870, the said John died intestate without issue, leaving him surviving his two brothers, complainant and said Morris, who are the only surviving heirs-at-law of said John, and the only persons entitled to share as distributees in said John's estate.

And as to the matters of the 3d exception where to his
105–6 former answer, on information and belief, admits that on or about 19th July, 1870, defendant Godey was appointed by the probate court of Kern county special administrator upon said John's estate, and acted as such, and that afterwards, to wit, on or about the 11th of August, 1870, said Godey took out letters of administration on said estate, and qualified, and thereafter acted as administrator thereof until some time in the fall of 1872. And on like information and belief admits that complainant's interest in said partnership property, viz., one-half as partner and one-fourth as distributee, fully appears of record in the proceedings of said probate court regarding said estate.

And this defendant, further answering in the matters of the 4th exception, says he does not know whether or not at all the times in said bill of complaint mentioned, complainant was an ignorant or unlettered man, or not of strong mind, or ignorant of the law, or unfamiliar with the ways of business, or unable to read or write only to a limited extent, or at all; but on information and belief avers that complainant is a man of moderate intelligence and moderately versed in the ways of business; can read and write to some extent, and knows as much of the law as men in his condition of life ordinarily know; and denies that this
107 defendant knew and on information and belief that defendant Godey knew or had cause to know that complainant was weak of intellect or wanting in education or knowledge as in complainant's said bill of complaint alleged. And further this defendant says he does not know, has not been informed save by complainant's said bill, and cannot set forth as to his belief or otherwise, whether or not defendant Godey acted as trustee for complainant as well as administrator of the estate of said John, or whether or not complainant was pursuaded by said Godey or induced, through confidence he then had in said Godey, to intrust to said Godey all the said property in said bill described, to the end that said Godey might, as administrator and trustee, wind up and settle the estate of said John and the partnership affairs of said John and complainant, but avers his belief to be that said Godey acted in regard to said partnership property merely as administrator of the estate of said John, and denies that this defendant had at all any knowledge of any other trust attaching to said Godey in respect to said property other than that of administrator as aforesaid. Upon the contrary, this defendant avers that he never heard of any such trust as that in said bill mentioned except by the allegations of said bill.

108 This defendant, further answering in the matters of the 5th exception, admits, on information and belief, that on or about

the 16th day of August, 1870, the said Godey, as administrator, procured the remainder of the personal property then undisposed of as in said bill alleged to be appraised under an order of the probate court of said Kern county, but on like information and belief denies that the same was thereupon appraised at much or at any less than its real value, but on the contrary avers that said property was appraised at more than its real value, and denies on information and belief that said Godey fraudulently kept from the sight or knowledge of the appraisers the most valuable portion or any portion of said property.

And further answering as to the matters of the 6th exception, this defendant admits that on or about the 27th day of August, 1870, said Godey, under an order of sale of said probate court, sold the property so appraised, as aforesaid, for the price of $2,077.50, but denies that there were but one or two bidders present, and denies that but one or two bids were made, and avers that there were several bidders present at said sale, and that there were at least four bids made thereat, and to the best of his remembrance more than four;

and avers that none of said bidders were willing to or would
109 pay more for said property than was paid by this defendant, to wit, the sum of $2,077\frac{50}{100}$, and denies that there could have been realized much or any more money from said sale than was realized, if it had been made in any other manner or after any other advertisement for any length of time, but alleges on information and belief that said sale was made in a proper manner after a suitable advertisement for a proper time.

And further answering as to the matters of the 7th exception, this defendant denies that at the time of said auction sale he knows that defendant Godey was selling the property then sold in the capacity of administrator and trustees, as in said bill of complaint alleged, and denies that he then knew complainant's rights therein as distributee or *cestui que trust* or in any manner whatever; but avers that at the time of said sale he understood and believed that said Godey was selling said property as administrator upon the estate of said John G. Griffith and in no other capacity.

And this defendant, further answering as to the matters of the 8th exception, says he does not know and has not been informed, save by complainant's said bill, whether or not on or about the 15th day of July, 1870, or at any other time defendant Godey procured
110 an affidavit to be made by complainant referring to complainant's status as a citizen of the United States, as in said bill set forth or otherwise, or whether or not said Godey caused said affidavit to be filed, or whether or not complainant made said affidavit at all, or made it in ignorance of its contents or under fraudulent acts of said Godey, or whether or not complainant was at the time under the influence of liquor, or whether or not said Godey knew him to be so, or knew that he did not understand said affidavit, or whether or not complainant was then ignorant of the law of naturalization, or ignorant as to what steps were necessary to make him a citizen of the United States, or did then suppose he was such a citizen in consequence of having made a certain declara-

tory statement of intention to become a citizen in the proper court of said Kern county.

And this defendant, further answering as to the matters in the 9th exception taken to his former answer, says he does not know, has never been informed, save by complainant's said bill, and cannot set forth as to his belief or otherwise, whether or not complainant in the month of September, 1870, or at any other time executed and
111 delivered to said Godey an instrument in writing, which was, or which purported to be, a deed or conveyance of the rancho or tract of land in said bill of complaint mentioned; or whether or not complainant intended to vest thereby any beneficial interest in said Godey in said rancho; or whether or not said instrument was made without the knowledge of complainant at the time of the execution and delivery thereof as to its contents, or without any consideration.

And this defendant, further answering in the matters of the 10th exception, admits that on or about the 7th November, 1876, said defendants sold all the property which this defendant had purchased at said auction sale, and all the right, title, and interest of defendant Godey in and to the land or rancho aforesaid to Pedro Altube and L. Peres, for the sum of $13,000.00 in gold coin; but avers that said sum of $13,000 was far in excess of the value of the property so sold. That in said sale the interest of said Godey in said land was valued at not over $550, and said personal property at not over $3,000. That the excess of the price paid over the real value of the property sold was paid by said Altube and Peres for the advantage to their cattle of the range on public lands adjacent to said
112 tract, the use of which was gained by said purchase. And defendant admits that said sum of $13,000 was equally divided between these defendants.

And this defendant, further answering in the matter of the 11th exception, admits that said land and said personal property so sold to Altube and Peres, as aforesaid, were worth more together than in any other way; and that it was for the interest of all parties concerned therein that they should be sold together, and admits that this defendant would have recognized that fact at the time of said several sales, had he thought of it at all; but avers that at the time of his purchase of the personal property at said auction sale he had no thought of any subsequent sale of said land by said Godey, and that he never considered whether or not it would be a good bargain to sell said personal property and said land together; and that the proposition to sell said property was never made to him, nor suggested to him, nor thought of by him until long after his purchase of said personal property at auction, as aforesaid; and avers that said purchase at auction sale was made by him in good faith, and without any fraudulent intent whatever. And this defendant admits, for anything he knows to the contrary, that the defendant Godey, at all the times in said bill mentioned, may have known that it
113 was for the interest of all parties entitled to share therein, that said real and personal property should be sold together and not separately.

And this defendant, further answering as to the matters of the 12th exception, says he does not know, has never been informed, save by complainant's said bill, and cannot set forth as to his belief, or otherwise, whether or not the property described in said bill as partnership property was sufficient, or more than sufficient, to pay all the debts of the said partnership and the said John, and all proper expenses in connection therewith, or whether or not all such debts or expenses have been paid.

And this defendant, further answering as to the matters of the 13th exception, says he does not know, has never been informed, save by said bill of complaint, and cannot set forth as to his belief or otherwise, whether or not any other inventory or appraisement of the property in said bill of complaint described was ever filed in said probate court except the inventory and appraisement in said bill mentioned, or whether or not, from the inventory so filed, there were omitted a large part, or any part, of said personal property, or whether or not such omissions, if any there were, were intentional on the part of said Godey, or made by him with the intent to cheat or defraud complainant; and, on information and belief, this defendant admits that there was omitted from said inventory said land, and that said omission on the part of said Godey was intentional, but, on like information and belief, this defendant denies that said omission was made on the part of said Godey with intent to cheat and defraud complainant out of his rights in said property. And this defendant admits that he never accounted to complainant for any of said land or other property as the proceeds thereof, and for the very good reason set forth in this defendant's answer to complainant's said amended bill of complaint heretofore filed herein.

114

And this defendant, further answering in the matters of the 14th exception, says he does not know, has not been informed, save by complainant's said bill, and cannot set forth as to his belief, or otherwise, whether or not said auction sale of August 27, 1870, was made without complainant's knowledge, (but admits that complainant was not present thereat,) or whether or not complainant never knew the price paid by this defendant for said property then sold until long after the sale to said Altube and said Peres; and admits that said alleged collusion between the defendants was not known to complainant until long after said sale to Altube and Peres; and further avers that said alleged collusion was never known to complainant, and that said complainant does not now know, and never knew of said alleged collusion, or of any collusion, between said defendants as in said bill alleged, or otherwise, with regard to said property, or any property; and for the very good reason that there was no collusion on the part of this defendant with said Godey, or with any other person, in regard to said property, or any property, or in regard to said auction sale or said sale to Altube and Peres, or any other sale.

115

And defendant, further answering as to the matters in the 15th exception taken to his former answer, on information and belief, denies that previous to said sale to Altube and Peres said com-

plainant was driven away from said land by defendant Godey or at all; and avers that he does not know and cannot set forth as to his belief, or otherwise, never having been informed, save by said bill of complaint, whether or not complainant remained absent
116 from said ranch, or did not learn of said sale to Altube and Peres until long after the same had been made. And this defendant, on information and belief, admits that complainant was entitled to one-half of said partnership property as partner, and to one-forth thereof as brother of said John; that is to say, to three-fourths of the whole, or its proceeds, after payment of the partnersip's debts and the debts of said John; but avers that at the time of said auction sale he had no knowledge of defendant's interest in said property or in any part thereof. And admits that this defendant has never delivered to complainant any portion of said property; but says that he does not know, has not been informed, and cannot set forth as to his belief, or otherwise, whether or not defendant, Godey, has accounted to complainant or delivered to him any portion of said property, or the proceeds thereof, or any portion other than that in said bill of complaint alleged.

And this defendant further denies all combination and confederacy charged against him in the said bill of complaint, with-
117 out that, that any other matter or thing in the said bill of complaint contained and not herein and hereby well and sufficiently answered unto, confessed and avoided, travered or denied, is true to his knowledge or belief.

All which matters and things this defendant is ready to aver, prove, and maintain, as this honorable court shall direct, and prays to be hence dismissed, with his costs and charges in this behalf most wrongfully sustained.

JOHNSON & JOHNSON,
Solicitors for Def't Williams.

FRANCIS JOHNSON,
Of Counsel.

STATE OF CALIFORNIA, }
County of Ventura, } *ss:*

C. S. Williams, being duly sworn, on his oath, doth say: That he has read the foregoing answer subscribed by him, and that he knows the contents thereof, and that the same is true of his own
118 knowledge, except as to the matters therein stated on his information and belief, and as to those matters he believes it to be true.

C. S. WILLIAMS.

Subscribed and sworn to before me, this 17th day of October, 1874.

JOHN T. STOW,
County Clerk and ex-officio Clerk of the Dist Court thereof.
[SEAL.] By L. F. EASTON, *Deputy.*

(Endorsed:) Service of copy of the within answer hereby admitted

Oct. 28, 1874. Barstow, Stetson & Houghton, solicitors for pl'ff. Filed Oct. 28, 1874. L. S. B. Sawyer, clerk. By J. F. O'Beirne, dep. clerk.

119 *Exceptions to Further Answer of Def't Williams.*

In the Circuit Court of the United States in and for the District of California.

ELLIS GRIFFITH
vs.
ALEXIS GODEY *et al.* } In Equity.

Exceptions taken by the complainant to the insufficient further answer of defendant Williams to said complainant's amended bill of complaint.

First. For that the said defendant Williams has not to the best and utmost of his knowledge, remembrance, information, and belief answered and set forth whether complainant is not, and at all the times in the amended bill of complaint mentioned was not, an ignorant and unlettered man and not of strong mind, and ignorant of the law and unfamiliar with the ways of business, and unable to read or write except to a very limited extent.

Second. For that the said defendant Williams has not in any manner aforesaid answered and set forth whether at the sale, on or about August 27, 1870, in said amended bill mentioned, there were but one or two bidders present.

120 Third. For that the said defendant Williams has not in any manner aforesaid answered and set forth whether on or about the 15th day of July, 1870, defendant Godey, well knowing that the land in the bill of complaint described was a part of the partnership property of complainant and said John, did not procure an affidavit to be made purporting to be made by complainant setting forth that complainant was a citizen of the United States of America, and other facts as stated in said bill of complaint, and cause said affidavit to be filed in the county court of said Kern county. Nor whether complainant, if he made said affidavit, did not make it in ignorance of its contents, and under fraudulent acts of said Godey. Nor whether complainant, if he made the same, was not under the influence of liquor at the time, and known by said Godey to be so, and known by said Godey not to understand said affidavit.

Nor whether complainant was not then ignorant of the law of naturalization, and ignorant as to what steps were necessary to make him a citizen of the United States of America, and did not then suppose he was such a citizen in consequence of having made a certain declaration of intention to become a citizen in the proper

121 court of said Kern county in the year 1870.

Fourth. For that the said defendant Williams has not in any manner aforesaid answered and set forth whether the use of the public land adjacent to the tract of land known as the "Seneguita" in said amended bill described was not to be had by the occupant

of said "Seneguita," as well before the purchase by Altube and Peres, in said amended bill mentioned, as afterwards, nor how the use of said public land was gained by such purchase.

Fifth. For that the said defendant Williams has not in any manner aforesaid answered and set forth whether it was not for the interest of all persons entitled to share in the "Seneguita" aforesaid, and in the horses, cattle, and other personal property in said amended bill mentioned, that the said "Seneguita," horses, cattle, and other personal property should be sold all together.

In all of which particulars the said complainant excepts to the further answer of said defendant Williams, as evasive, imperfect, and insufficient, and humbly prays that the said defendant
122 Williams may be compelled to put in a full and sufficient answer to the said amended bill of complaint.

BARSTOW, STETSON & HOUGHTON,
Complainant's Solicitors.

EDW'D GRAY STETSON,
Of Counsel.

(Endorsed:) Service of the within exceptions, by copy, this 29th day of March, 1875, is admitted. Johnson & Johnson, solicitors for def't Williams. Filed 30 March, 1875. L. S. B. Sawyer, clerk.

123 On the 28th day of October, A. D. 1874, defendant Williams filed a further answer, which is hereto annexed.

On the 30th day of March, A. D. 1875, exceptions to the further answer of defendant Williams were filed, and are hereto annexed.

On the 5 day of May, A. D. 1875, an order was made and entered herein, in the words and figures following, to wit:

Order of Court.

At a stated term of the circuit court of the United States of America for the district of California, held at the court-room, in the city and county of San Francisco, on Wednesday, the 5th day of May, in the year of our Lord one thousand eight hundred and seventy-five.

Present: The Honorable Lorenzo Sawyer, circuit judge.

ELLIS GRIFFITH *vs.* ALEXIS GODEY *et al.*

Exceptions to further answer of defendant, C. S. Williams, heretofore argued and submitted, having been duly considered by the court, it is ordered that the first and third exceptions be sustained and the others are overruled, without costs to either party.

124 (Endorsed:) I hereby certify that the foregoing is a full, true, and correct copy of an original order of court entered in the above-entitled action. Attest my hand and seal of said circuit court, this 1st day of October, A. D. 1879. L. S. B. Sawyer, clerk. By J. F. O'Beirne, deputy clerk.

125 *Stipulation allowing Def't Williams to Amend.*

In the Circuit Court of the United States in and for the District of California.

ELLIS GRIFFITH
vs.
ALEXIS GODEY and C. S. WILLIAMS.

It is hereby stipulated and agreed by and between the solicitors for plaintiff and the solicitors for defendant Williams that the following words, viz, "and cannot set forth as to his belief, or otherwise," shall be considered as inserted in the further answer of said defendant as to the matters of the eighth exception of plaintiff to said defendant's answer after the words, "and has not been informed, save by complainant's said bill," and before the words, "whether or not, on or about the 15th day of July, 1870," &c.; and that the same shall stand and have the same force and effect to bind the said defendant Williams, and to form part of the said further answer, as though it had been originally inserted and sworn to therein by said defendant; and as if said further answer so amended had not
126 been excepted to in regard to that portion thereof.

BARSTOW, STETSON & HOUGHTON,
Solicitors for Complainant.

June 8, 1875.

(Endorsed:) Filed June 14, 1875. L. S. B. Sawyer, cl'k. By J. F. O'Beirne, d'p cl'k.

127 *Replication.*

Circuit Court of the United States, District of California.

ELLIS GRIFFITH, Complainant,
vs.
ALEXIS GODEY *et al.*, Defendants. } In Equity.

The replication of Ellis Griffith, complainant, to the answers and further answers of both defendants.

This repliant, saving and reserving unto himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answers and further answers, for replication thereunto says: That he will aver, maintain, and prove his amended bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answers and further answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing
128 whatsoever in the said answers or further answers, or any of them, contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver, maintain,

and prove, as this honorable court shall direct, and humbly prays as in and by his said amended bill he has already praved.

BARSTOW, STETSON & HOUGHTON,
Solicitors for Complainant.

(Endorsed:) Service of a copy of the within replication this 3d day of July, 1875, is admitted. Moore, Laine, Delmas & Leib, solicitors for def't Godey. Johnson & Johnson, solicitors for def't Williams. Filed July 3d, 1875. L. S. B. Sawyer, cl'k. By J. F. O'Beirne, dep. cl'k.

129 On the 14th day of June, A. D. 1875, a stipulation was filed allowing defendant Williams to amend his answer, which stipulation is hereto annexed.

On the 3d day of July, A. D. 1875, complainant filed a replication to the answers and further answers aforesaid, which replication is hereto annexed.

On the 30th day of October, A. D. 1875, two rules were duly entered in the order or rule-book of this court, the same being in the words and figures following, to wit:

Decree.

U. S. Circuit Court.

ELLIS GRIFFITH
vs.
ALEXIS GODEY *et al.* } 1201.

In this cause the complainant having filed exceptions for insufficiency to the answer of defendant Godey to the amended bill, which exceptions have after argument been allowed by the court, and the said defendant having failed to put in a further answer thereto; therefore, on motion of Messrs. Barstow, Stetson & Houghton, solicitors for complainant, it is ordered and decreed that the said amended bill be taken *pro confesso* as to said defendant, so far as the matter of said exceptions is concerned.

BARSTOW, STETSON & HOUGHTON,
Compl't's Sol'rs.

Entered Oct. 30, 1875.

L. S. B. SAWYER, *Cl'k.*
By J. F. O'BEIRNE, *Dep. Clerk.*

130 U. S. Circuit Court.

ELLIS GRIFFITH
vs.
ALEXIS GODEY *et al.* } 1201.

In this cause the complainant having filed exceptions for insufficiency to the answer of defendant Williams to the amended bill, which exceptions being allowed, the said defendant Williams put in a further answer, and complainant having filed exceptions for in-

sufficiency to such further answer, of which the first and third exceptions were allowed by the court, and the said defendant having failed to put in a still further answer thereto; therefore, on motion of Messrs. Barstow, Stetson and Houghton, solicitors for complainant, it is ordered and decreed that the said amended bill be taken *pro confesso* as to said defendant Williams, so far as the matter of said first (1st) exception to said further answer is concerned.

Thereafter said cause having come out to be heard and argued, and submitted to the court for consideration and decision, a final decree was filed and entered herein, the words and figures, following, to wit:

131 At a stated term of the circuit court of the United States of America for the district of California, held at the court-room, in the city and county of San Francisco, on Wednesday, the 1st day of October, in the year of our Lord one thousand eight hundred and seventy-nine.

Present: The Honorable Stephen J. Field, circuit justice; the Honorable Lorenzo Sawyer, circuit judge.

ELLIS GRIFFITH
vs.
ALEXIS GODEY *et al.* } No. 1201.

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed that the said complainant's bill be, and the same hereby is, dismissed; and it is further ordered, adjudged, and decreed that complainant pay defendants their costs in this behalf expended to be taxed.

(Signed) FIELD, *Circuit Justice.*

132 (Endorsed:) Filed and entered Oct. 1, 1879. L. S. B. Sawyer, clerk.

Whereupon said pleadings, subpœnas, stipulations, orders, and final decree are hereunto annexed, said decree being duly signed, filed, and enrolled, pursuant to the practice of said circuit court.

Attest, &c. [SEAL.] L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE, *D'p'y Cl'k*

(Endorsed:) Enrolled papers. Filed October 1st, A. D. 1879. L. S. B. Sawyer, clerk. By J. F. O'Beirne, d'p'y clerk.

133 *Stipulation Granting Time to Godey to Answer.*

In the United States Circuit Court, District of California.

ELLIS GRIFFITH, Plaintiff,
vs.
ALEXIS GODEY and C. S. WILLIAMS, Defendants.

It is hereby stipulated that def't Godey have until April 16th, 1874, to answer herein.

Dated March 26th, 1874.

BARSTOW, STETSON & HOUGHTON, *For Pl'ff.*

(Endorsed:) Filed 6th April, 1874. L. S. B. Sawyer, clerk. By J. F. O'Beirne, dep. cl'k.

134 *Stipulation Granting Time to Except or Reply to Answer of Williams.*

Circuit Court of the United States, District of California.

ELLIS GRIFFITH
vs.
ALEXIS GODEY. } In Equity.

It is hereby stipulated on the part of defendant Williams that the plaintiff may have until and including the 12th day of July, 1874, in which to file his exceptions to the answer of said defendant or his replication, as he may be advised.

May 2d, 1874. JOHNSON & JOHNSON,
Solicitors for Def't Williams.

(Endorsed:) Filed 4 May, 1874. L. S. B. Sawyer, cl'k. By J. F. O'Beirne, d'p. cl'k.

135 *Order Extending Time to Except to Answer of Godey.*

Circuit Court of the United States, District of California.

ELLIS GRIFFITH
vs.
ALEXIS GODEY. } In Equity.

Let the complainant have ten (10) days from date hereof in which to file exceptions to the answer of defendant Godey.

(Signed)
May 4, 1874. OGDEN HOFFMAN,
Dist. Judge.

(Endorsed:) Filed 4th May, A. D. 1874. L. S. B. Sawyer, cl'k. By J. F. O'Beirne, dep. cl'k.

136 *Stipulation Granting Time to Reply to Ans. of Godey.*

ELLIS GRIFFITH
vs.
ALEXIS GODEY *et al.* } In Equity.

It is hereby stipulated on the part of defendant Godey that the plaintiff may have until and including the 12th day of July, 1874, in which to file his exceptions to the answer of said defendant or his replication, as he may be advised.

May 4, 1874. MOORE, LAINE, DELMAS & LEIB,
For Def't Godey.

(Endorsed:) Filed 6 May, 1874. L. S. B. Sawyer, clerk.

137 *Stipulation Allowing Time to File Ans. to Def't Godey.*

In the Circuit Court of the United States, District of California.

ELLIS GRIFFITH, Pl'ff, *vs.* ALEXIS GODEY *et al.*, Def'ts.

It is stipulated that def't Godey may have until the first rule day in February, 1875, in which to put in a more complete answer as to the matters in his answer already on file, which have been adjudged insufficient on exceptions thereto.

BARSTOW, STETSON & HOUGHTON,
Solic't'rs for Compl't.

San Francisco, November 9th, 1874.

(Endorsed:) Filed Nov. 11, 1874. L. S. B. Sawyer, cl'k. By J. F. O'Beirne, dep. cl'k.

138 *Order Fixing Time for Taking Testimony.*

Circuit Court of the United States, District of California.

ELLIS GRIFFITH
v.
ALEXIS GODEY *et al.* } In Equity.

On reading and filing the stipulation of the parties hereto, and on motion of Mr. Stetson, solicitor for complainant, it is ordered that the time allowed for taking testimony in this cause be enlarged and extended so that the complainant shall have two (2) months from the first day of September, 1875, in which to take his testimony herein, and defendants two (2) months after complainant has closed to take theirs, and complainant one (1) month after the defendants have closed to take testimony in rebuttal. And that such testimony shall be taken orally before some competent examiner or examiners appointed by this court, except that on good cause shown either party may have the testimony of any witness or witnesses taken in some other way upon order of this court.

139 And that all documentary evidence be introduced within the respective periods above limited before any examiner so appointed.

(S'g'd) LORENZO SAWYER,
Circuit Judge.

Dated Sept. 7, 1875.

(Endorsed:) Filed 7th Sept., 1875. L. S. B. Sawyer, cl'k. By J. F. O'Beirne, dep. cl'k.

140 *Stipulation for Taking Testimony.*

Circuit Court of the United States, District of California.

ELLIS GRIFFITH
vs.
ALEXIS GODEY *et al.* } In Equity.

It is stipulated that an order may be made herein to the effect

that complainant may have two (2) months from September 1st, 1875, in which to take his testimony herein, and that defendants may have two months after complainant has closed to take theirs, and that complainant may have one (1) month after defendants have closed to take testimony in rebuttal; and that the said testimony shall be taken orally before examiner to be appointed by the court; and the parties request that F. W. Craig, of Bakersfield, Kern county, California, be appointed examiner to take the testimony of witnesses resident in that neighborhood.

And that all documentary evidence be introduced within said periods by the respective parties before some one of the examiners to be appointed.

And that said testimony be taken according to law and the equity rules governing this court.

141 Dated August 13, 1875.

BARSTOW, STETSON & HOUGHTON,
Solicitors for Complainant.
MOORE, LAINE, DELMAS & LEIB,
Solicitors for Def't Godey.
JOHNSON & JOHNSON,
Solicitors for Def't Williams.

(Endorsed:) Filed 7th Sept., 1875. L. S. B. Sawyer, cl'k. By J. F. O'Beirne, dep. cl'k.

142 *Order App'g Special Examiner.*

Circuit Court of the United States, District of California.

ELLIS GRIFFITH
vs.
ALEXIS GODEY *et al.* } In Equity.

On reading and filing the stipulation of the parties hereto, it is ordered that F. W. Craig, of Bakersfield, Kern county, State of California; be, and he is hereby, appointed special examiner herein to take the testimony of witnesses who reside in his neighborhood, on behalf of all the parties to this cause.

Dated Sept. 7th, 1875.

(Signed) LORENZO SAWYER,
Circuit Judge.

(Endorsed:) Filed 7th Sept., 1875. L. S. B. Sawyer, cl'k, by J. F. O'Beirne, dep. cl'k.

143 *Stipulation giving Godey Time.*

Circuit Court of the United States, District of California.

ELLIS GRIFFITH *vs.* ALEXIS GODEY *et al.*

Defendant Godey may have till April 1st, 1876, to take testimony herein on his part, beginning on the 1st of January, 1876.

Dated Nov'r 5, 1875.

BARSTOW, STETSON & HOUGHTON,
Compl'nt's Sol'rs.

(Endorsed:) Filed 8 Nov'r, 1875. L. S. B. Sawyer, clerk.

144 *Stipulations Extend'g Compl'ts Time to Take Testimony.*

Circuit Court of the United States, District of California.

ELLIS GRIFFITH *vs.* ALEXIS GODEY *et al.*

We hereby consent that the complainant's time to take testimony in this suit be extended until and including the 10th day of February, 1876.

MOORE, LAINE, DELMAS & LEIB,
Solicitors for Defendant Godey.
JOHNSON & JOHNSON,
Solicitors for Defendant Williams.

(Endorsed:) Filed 23d December, 1875. L. S. B. Sawyer, clerk.

145 Circuit Court of the United States, District of California.

ELLIS GRIFFITH *vs.* ALEXIS GODEY *et al.*

It is hereby stipulated that the complainant may have until the 1st day *day* of April, 1876, to take testimony in this cause, and that the defendants shall be entitled to as much time to take their testimony as the complainant shall have had for taking his his testimony-in-chief.

JOHNSON & JOHNSON,
Att'ys for Def't Williams.
BARSTOW STETSON & HOUGHTON,
Sol'rs for Complainant.
MOORE, LAINE, DELMAS & LEIB,
Sol'rs for Def't Godey.

Dated February 3d, 1876.

(Endorsed:) Filed Feb'y 9, 1876. L. S. B. Sawyer, clerk. By J. F. O'Beirne, d'p. cl'k.

146 United States Circuit Court, District of California.

ELLIS GRIFFITH *v.* ALEXIS GODEY *et al.*

It is hereby stipulated that complainant's time for taking testimony herein be extended until and including the first day of June, 1876.

Dated May 9th, 1876.

MOORE, LAINE & LEIB,
Att'ys for Def'ts.

(Endorsed:) Filed 10 May, 1876. L. S. B. Sawyer, cl'k. By J. F. O'Beirne, dept. cl'k.

147 Circuit Court of the United States, District of California.

ELLIS GRIFFITH *vs.* ALEXIS GODEY *et al.*

It is hereby stipulated that complainant's time for taking testimony in this cause be extended until and including the 1st day of June, 1876.

Dated May 6, 1876.

JOHNSON & JOHNSON,
Solicitors for Def't Williams.

(Endorsed:) Filed 10 May, 1876. L. S. B. Sawyer, cl'k. By J. F. O'Beirne, dep. cl'k.

148 *Stipulation as to Special Examiner A. M. Clark.*

United States Circuit Court, District of California.

ELLIS GRIFFITH
vs.
ALEXIS GODEY *et al.* } In Equity.

It is stipulated that A. M. Clark, (county clerk) of Fresno City, California, may be appointed by this court a special examiner in chancery to take the testimony of witnesses in this suit residing in said Fresno City and the neighborhood thereof.

JOHNSON & JOHNSON,
Solicitors for Def't Williams.
BARSTOW, STETSON & HOUGHTON,
Solicitors for Compl't.
MOORE, LAINE & LEIB,
Sol'rs for Def't Godey.

April 11th, 1876.

(Endorsed:) Filed 13 April, 1876. L. S. B. Sawyer, clerk.

149 *Order Appointing Special Examiner.*

United States Circuit Court, District of California.

ELLIS GRIFFITH
vs.
ALEXIS GODEY *et al.* } In Equity.

On reading and filing the stipulation of the parties hereto, it is ordered that A. M. Clark, (county clerk) of Fresno City, be, and he is hereby, appointed a special examiner in chancery of this court to take the testimony of witnesses in this suit residing at or in the neighborhood of said Fresno.

(Signed) LORENZO SAWYER,
Circuit Judge.

(Endorsed:) Filed 13 April, 1876. L. S. B. Sawyer, clerk.

150 *Substitution of Att'y & Notice.*

Circuit Court of the United States, District of California.

ELLIS GRIFFITH *vs.* A. GODEY *et al.*

We hereby consent that Messrs. Stetson & Houghton be substituted for us as solicitors for the complainant herein. Dec. 29, 1876.

BARSTOW, STETSON & HOUGHTON,
Comp't's Solicitors.

Please take notice that the undersigned have been substituted in the place of Messrs. Barstow, Stetson & Houghton, as solicitors for complainant herein.

San Francisco, January 2, 1877.

Yours, STETSON & HOUGHTON.

To Messrs. Moore, Laine & Leib, solicitors for def't Godey, & Messrs. Johnson & Johnson, solicitors for def't Williams:

Service of a copy of the within substitution and notice this 5th day of January, 1877, is admitted.

JOHNSON & JOHNSON,
Solicitors for Def't Williams.
MOORE, LAINE, DELMAS & LEIB,
Solicitors for Def't Godey.

Service of a copy of the within substitution and notice this 5th day of January, 1877, is admitted.

JOHNSON & JOHNSON,
Sol'rs for Def't Williams.
MOORE, LAINE, DELMAS & LEIB,
Sol'rs for Def't Godey.

151 (Endorsed:) Filed 9 January, 1877. L. S. B. Sawyer, clerk. By J. F. O'Beirne, deputy.

152 *Admission as to Dr. Walker's Testimony.*

Circuit Court of the United States, District of California.

ELLIS GRIFFITH *vs.* ALEXIS GODEY *et al.*

For the purpose of the hearing in this case, we admit that Dr. J. A. Walker, now of Lake county, California, would, if called as a witness for the defendants, testify that the facts stated by him in his letter of October 13, 1877 (of which a copy is hereto annexed), are true.

STETSON & HOUGHTON,
Solicitors for Complainant.

March 15, 1878.

153 *Stipulation as to Opening Depositions.*

In the Circuit Court of the United States for the District of California.

ELLIS GRIFFITH *vs.* ALEXIS GODEY *et al.*

It is hereby stipulated and agreed that the clerk of the court may open any of the depositions taken, or to be taken, in the above-entitled action, upon the request of any of the attorneys for the several parties herein.

Dated Sept. 13, '78.

JOHNSON & JOHNSON,
Solicitors for Def't Williams.
STETSON & HOUGHTON,
Solicitors for Complainant.
MOORE, LAINE & LEIB,
Solicitors for Def't Godey.

(Endorsed:) Filed 13 September, 1878. L. S. B. Sawyer, clerk.

154 *Stipulations and Admissions.*

Circuit Court of the United States, District of California.

ELLIS GRIFFITH, Complainant, *vs.* ALEXIS GODEY *et al.*, Defendants.

It is stipulated that complainant or def'ts may offer in court at the hearing of this cause as evidence certified copies of the following papers, with the same effect as if offered before an examiner of the court, saving all other legal objections thereto, viz.:

1. "Affidavit of posting notices" in the matter of the estate of John G. Griffith, deceased, in the probate court of the county of Kern, in the State of California. (Filed August 16th, 1870.)

2. "Affidavit of posting notices" in the same matter. (Filed May 27th, 1872.

3. Assessment of Ellis Griffith, in Kern county aforesaid, for the year 1870; and also any other papers filed in the matter of said estate.

And for the purposes of the hearing in this case the defendants make the following admissions:

155 1st. That Manuel Marmolejo, now of San Jose, in the State of California, would, if called as a witness herein for the complainant, testify that the facts stated by him in his letter of Nov. 22nd, 1878, (a copy of which is hereto annexed), are true; and the letter may be offered in evidence with the same effect as Marmolejo's testimony under oath before an examiner.

2nd. That Morris Griffith (who is mentioned in the amended bill in this suit) refused to join as a party complainant in this suit, as is alleged in said amended bill.

December 11, 1878.

MOORE, LAINE & LEIB,
Solicitors for Defendant Godey.
JOHNSON & JOHNSON,
Solicitors for Def't Williams.
STETSON & HOUGHTON,
Solicitors for Pl'ff (Compl'nt).

156 *Stipulation and Admissions M. Marmolejo.*

(Copy.)

SAN JOSE, *Nov. 22nd*, '78.

MESSRS. STETSON & HOUGHTON, *San Francisco.*

DEAR SIRS: According to my books, kept during 1870, on the 8th day of June, 1870, I bought of Alexis Godey 44 head of cattle of John Griffith's brand and property. Alexis Godey went to Griffith's ranch, picked out the cattle. He drove it 15 miles to San Emilio, where I was, and there Alexis Godey delivered it to me. I received the cattle and paid for it, & then drove it to San Joaquin, & there sold it to Mr. Henry Miller.

I remain, yours, truly,

MANUEL MARMOLEJO.

P. S. On the 8th of June, 1870, I bought the cattle, and on the same day Alex. Godey delivered them to me. On the 9th of June, 1870, I drove them to the San Joaquin.

Yours, &c., M. MARMOLEJO.

(Endorsed:) Filed Dec. 11, 1878. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d'p'y cl'k.

157 *Admissions as to J. A. Walker's Testimony.*

(Copy.)

LOWE LAKE, *October* 13, '77.

A. GODEY:

SIR: I rec'd your letter to-day. I recollect distinctly your loaning Ellis Griffith a certificate of deposit or check for the amount of one thousand dollars sometime in the year of 1870. The check was sold to Blackman & Co., of San Luis Obispo. The said Griffith paid to A. Jesser, myself, and Goldberg our ac's, & the balance he rec'd himself.

J. A. WALKER.

(Endorsed:) Filed July 22, 1879. L. S. B. Sawyer, clerk.

158 *Pedro Altube.*

Circuit Court of the United States, Ninth Judicial Circuit, District of California.

ELLIS GRIFFITH *vs.* ALEXIS GODEY *et al.* } No. 1201.

Be it remembered, that on this, 23d day of March, A. D. 1876, at my office in the United States courts building, in the city of San Francisco, personally appeared before me Jos. F. O'Beirne, an examiner in chancery duly appointed by the circuit court of the United States for the ninth judicial circuit in and for the district of California, Pedro Altube, a witness on behalf of the complainant in the above entitled cause.

Edward Gray Stetson, Esq., appeared as solicitor for the complainant, and Francis Johnson, Esq., as solicitor for def't, C. S. Williams, and S. F. Leib, Esq., solicitor for def't, Alexis Godey.

And the said witness having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as follows; that is to say:

Examination-in-chief by Mr. STETSON:

159 Question. What is your name, age, occupation, and place of residence?

Answer. My name is Pedro Altube; my age is 52 years and upwards; my occupation is stock dealer, cattle dealer; and my place of residence San Francisco, California. I have been engaged in stock dealing the last 26 years in California. I know Alexis Godey, the defendant in this suit. I know C. S. Williams, the other defendant. It must be about 15 years that I have known Alexis Godey. I knew Ellis Griffith, complainant. I knew John G. Griffith, his brother, during his lifetime. The Griffiths lived at the rancho called La Cienigita, in Kern county. They were engaged in raising cattle and horses there. The Griffiths had there 400 or 500 head of horned cattle, and about as many horses. I think it must have been in 1870. It was the same number prior to and after the death of John G. Griffiths. They had a pre-emption claim or title to public lands. The Griffiths occupied a large portion of land. They had, as I stated before, one pre-emption claim, but they occupied that land and other lands. The range was a good one. There was water on it, good water, plenty of it, all the year round. This water was across the whole of the pre-emption claim. The water is scarce in the vicinity of this place, but there is some water near the pre-emption claim besides that already spoken of—a little. The residence of Alexis Godey, in 1870, was about 12 miles
160 from this Cienigita in a southeasterly direction. My Godey lived on the Cuyama rancho; he was raising cattle there. I think Godey occupied public land, but public lands claimed by Gaspar Oreñga, who lives at Santa Barbara. No one occupied the range between Godey & the Griffiths at that time. Godey's and the Griffiths' cattle would sometimes range up until they met. The general habit among horned cattle and horses is to remain on or about the place where they are born, but in winter, on account of the scarcity of pasture, they are apt to leave for other places. Mr. Williams lived at San Emilio, about 12 miles from the Cieniguita, in a southerly direction—a little southeasterly. In 1870 defendants Williams & Godey lived at a distance of a mile and a half apart. Defendant Godey occupied the range to the south of the Griffiths. C. S. Williams was a farmer at San Emilio; if he was a cattle-raiser he raised very little cattle. I know that Mr. Williams was working for one John Funck. I could not say that def't Williams occupied any other range than that where he lived. I do not know. Funck occupied a range at the San Emilo ranch—the same ranch I have mentioned. Mr. Funck did not occupy any other cattle range at

that time. I had a partner in 1870, by name Luis Peres, and
161 he has been my partner up to the present time. The name of the firm is Peres & Co., and as such we deal in buying & selling cattle, and were so engaged in 1870. Peres & Co. had interests in Kern county in 1869, 1870, and along there. We had 2,000 head of horned cattle—all oxen, no cows—oxen for market. These were in Kern county. We did not own any land there. We were using Government land to support these cattle. That particular range was occupied by us several years before 1870; then we abandoned it and came back in 1870. We occupied it once and abandoned it again. We occupied the same land up to last year. That was enough range for those 20,000 head of cattle in 1870. There was enough pasture for them during the whole of the year 1870.

Ques. Had you any intention at any time in 1870 of removing these cattle of yours, or any of them, from the range you have spoken of to any other.

(Objected to by Godey, on the ground that the intention of a party cannot be ascertained in this way—cannot be ascertained by a direct question asking him what his intention was.)

Ans. Yes, sir; we had the intention of removing part of the cattle in 1870 to the ranchito, a place distant about 2½ miles
162 from Griffith's place. The rancho belonged to Godey. I have only known this place by the name of the ranchito.

Ques. Was that the only removal Peres & Co. intended to make?

(Same objection as above set forth.)

Ans. No; we had an intention of purchasing land in the vicinity of the ranchito and placing cattle upon it; cattle that we intended to purchase, not cattle then owned by us.

Ques. Was this a general intention or an intention directed only to particular cattle?

(Same objection.)

Ans. It was a general intention.

Ques. Did you have any conversation with either of the Griffiths previous to John Griffith's death in regard to purchasing any of this Griffith property?

(Objected to by Godey & W'ms, on the ground that it is hearsay testimony, & not admissible, & that it is irrelevant, incompetent, & immaterial.)

Ans. I did.

Ques. What was it?

(Def'ts object, on the same grounds stated in the last objection.)

Ans. About 2 months previous to Jack's death I had a conversation with him and made a proposition to him to purchase the
163 whole of his property; the property which was sold to me by Godey; I refer to both land & cattle sold to me afterwards by Godey?

Ques. What did you offer him?

(Same objection.)

Ans. I offered him $12,000, and made only that offer.

Ques. Did he refuse or accept it?

(Same objection.)

Ans. He refused the offer, but we agreed to speak about the matter afterward. I had a conversation afterwards with Godey in respect to purchasing that property after Jack Griffith's death. Jack & I never spoke about the matter but once. This conversation which took place between Godey & myself must have been one, 2, or 3 months after Jack's death. We had this conversation at the Arroyo de San Emilio. The substance of the conversation was that I should purchase this Griffith property if he was willing to sell it to me, for the sum of $12,000, agreeing to purchase the property as it was then. He gave no definite answer to my offer. I was present when the cattle was delivered by Godey to Marmolejo. I do not recollect the number. The conversation with Godey was before the cattle were delivered; a day, probably half a day or a few hours, before the delivery of the cattle
164 to Marmolejo. I did not have any other conversation after that with Godey until the time of the purchase. I refer to the purchase of the land and cattle of the Cieniguita by Peres & Co. I do not recollect the precise date, but I think it was in 1871. It must have been about 6 months after the first conversation. We agreed upon the purchase before the deed was delivered—about 2 months before. This conversation took place at the house of Mr. Marmolejo, on the ranch Arroyo de San Emilio. The agreement was that I should pay Godey the sum of $13,000 for the land & cattle of the Cieniguita land & cattle owned by Griffith, such as were there. That was in gold. I think I had no conversation with Godey between these 2 conversations between us. I saw Mr. Godey while I was on my way to the rancho of Mr. Temple; this was the time I had my first conversation with him—about the time of the Marmolejo sale. I recollect that this $13,000 was paid in 2 instalments; one was sent down there and the other was paid by me in San Francisco by check. The first instalment was about one-half the amount. The first instalment was paid down there in coin. I do not recollect when the first instalment was paid. The
165 payment of the 2d instalment must have been one or two months after the first; it may have been less. The books of Peres & Co. show everything. Peres & Co. were aware, at the time of the purchase of this land from Godey, that he had no title to the land. I was aware that it was public land. That being my business, I may safely say I knew the value of cattle and horses in Kern county at that time. I have been purchasing from 7 to 8,000 head of cattle every year for slaughtering purposes for a great many years. I am acquainted with the value of cattle ranges in Kern county, & was acquainted with the value at that time. I considered the cattle & the Cieniguita worth the sum I paid for it at that time, although there was no title to the Cieniguita at that time. I bought some other land at that time, the Aguagito, from Godey. Godey had title

to the Aguagito property at that time. I paid the sum of $4,000 for that land. It was a separate transaction from the Griffith purchase. I paid Godey $17,000 for all I bought of him then. I negotiated this purchase with Mr. Godey; Mr. Williams never spoke to me; I conducted the business in the Spanish language. Godey speaks Spanish well; I am a Spaniard by birth. The agreement between me & Godey was, that the land should be purchased
166 without any reference to damage. No reference was made whatever to damages. The purchase was made of the land & stock without any consideration as to damages.

Ques. At the time of the negotiations for the purchase, did Peres & Co. intend to put any other stock on the Griffith range than what was already there?

(Def'ts object, on the ground that the intention of a party cannot be ascertained in this manner, but must be ascertained, if at all, from the facts proven or to be proven, and on the further ground that the question is incompetent, irrelevant, & immaterial.)

Ans. My intention was not only to place more stock on the land, but to make additional purchases of land adjoining. The season of 1870 was pretty bad in regard to pasture. I refer to the season of the year I made this purchase. The horses on the cieniguita were valued at about $15 to 18 a head; the average value, horned cattle, about $18 a head, small calves not counted. The calves under a year old are not counted in. This includes cattle, also the calves over a year old. There were probably about a hundred calves under a year old.

167 Ques. At the time of the negotiations about this purchase, did Peres & Co. intend to remove to the Griffith range any of their 2,000 cattle already spoken of?

(Same objection as last by both def'ts.)

Ans. Not the 2,000 head of cattle already spoken of, but other cattle—other cattle that I had at San Joaquin, and which I intended to place there. My intention was to purchase more land before putting any more stock there—additional land to that purchased of Godey, near there—adjoining land. There was no necessity for removing any of those 2,000 cattle from the range where they were. In 1870 my occupation frequently took me to Kern county. I was 2 or 3 times down in Kern county during the summer of 1870. I was at both places, San Emilio and Cieniguita, in July or August, 1870. I passed by them. I spoke with people there. I knew nothing about the sale of cattle to Williams in August, 1870. I was purchasing cattle at that time. If I had heard of a sale of cattle at that time, I would have been likely to have attended it as a purchaser. No better sale could have been made than the one that was made to Peres & Co. I was in Havilah in the summer of 1870. I was there 4 or 5 times during the summer of 1870. Without knowing anything about the sale, I went there as a pur-
168 chaser. When I was at Havilah in the summer of 1870, I had no notice of the auction sale.

Cross-examination by Mr. LEIB, for both def'ts:

The Griffith Bros. had only possession of the Cieniguita. They had no other title. They had a little house on it of the value of about $50. They had corrals on the land. They only had a little house and the corrals for the cattle. There were no other improvements or enclosures. All of these corrals were worth about $100. The corrals and the house were worth about $150. The Cieniguita is the same land to which the Griffith Bros. had a pre-emption claim. The Griffith Bros. were foreigners. I cannot say that they were ever naturalized. 160 acres can be embraced in a pre-emption claim. Assuming that they had a good title to the land, it was worth about $40 an acre in 1870. It is good land, but the value of it was owing to the water there. It is good land in part for agriculture.

Ques. Suppose that a fence should be placed around this 160-acre tract, and no use of any other land was allowed in connection
169 with it, except access, what would it have been worth per acre in 1870?

Ans. Suppose you were to enclose Montgomery street on both sides, what would it be worth then? It would be worthless. Without other lands, the lands would be worth about $5 per acre. If the land was enclosed it would be worth about $5 per acre; its value depends on adjacent lands. The value depends upon the use which might be made of adjacent lands, because there are places 7 & 8 miles in length, where no water can be found. The Griffith Bros. did not claim any other pre-emption claim than this one of 160 acres, called Cieniguita, of which I have spoken. I knew how many head of cattle & horses the Griffiths had from what the deceased, Jack Griffith, told me.

(It is admitted that the Griffith Bros. were partners in all the property.)

Witness resumes:

I understand that Williams & Funck were partners at Sacramento, but I did not know them as partners at San Emilio. The 2,000 head of cattle which were at San Emilio were all brought to San Francisco & slaughtered here. In 1872 these 2,000 head of cattle were removed from San Emilio. They remained in the neighborhood of the same range where they were brought to in 1869—from 1869 to 1872. I did not
170 take any of this 2,000 head to the Cieniguita, but sometimes they would range as far as the Cieniguita. They would go there after water, & then would return. I do not recollect that any one was present when I had the conversation alluded to with Jack Griffith in regard to the purchase of this property; probably no one was present. I refer to the property owned in partnership by both the Griffiths. At the time I bought the cattle & horses from Godey I did not count them. It was prior to Godey's appointment as administrator that I made him the offer of $12,000. I suppose at that time Godey had no power to sell the property unless the heirs

of Jack Griffith allowed him to do so. I do not know whether the heirs of Jack Griffith had at that time authorized Godey to sell the property. I made the proposition to make the purchase so that that information should reach the heirs. My first proposition was made to Ellis Griffith. After the death of Jack Griffith I requested Godey to inform me of the sale of the property. My first proposition was to Jack Griffith; then he went to San Luis Obispo; then I asked *to* Godey to obtain the information from Jack Griffith,
171 whether he wanted to sell the property, but Jack Griffith never gave any answer. This is the request to Godey to which I have just referred. I know Ellis Griffith, but never made any proposition to him to buy. I never talked to Funk about this matter. I have not talked about the matter I am testifying to before to-day. The whole of the cattle which I bought of Godey remained there. Afterwards part of it was sold there, part died, and the remainder was brought to San Francisco. Leopold Venade gathered the cattle, also others, for me from that ranch. Immediately after I made the purchase the cattle were gathered in & left there. The cattle were disposed of during a period of 2 years after the purchase. Don't know how many died. The winter of 1870 & '71 was a bad winter for cattle. But a few head of the cattle I purchased from Griffith died. I suppose about 150 died during that winter. I did not take any other cattle there; have never taken any cattle there. To Cieniguita I never took any cattle. I sold the Cieniguita.

(Mr. Stetson objects to the question regarding the sale of any of this property by Peres & Co., as incompetent, irrelevant, and immaterial.)

I sold the Cieniguita a year ago, & everything that was there. I don't know how many head was there. We brought some of the cattle to San Francisco and there were not above
172 50 head there at the time of the sale. The cattle were valued at $10 a head; I sold the whole range of the Cieinguita, including $500 worth of cattle, for $4,000. The value of the Cieniguita was fixed by Godey at $1,000, and the value of the horses and cattle at that time were valued at $12,000. I was told that there were there about 1,000 head of cattle and horses by Godey and others. I made a purchase of the land more on account of my value of the property, because I intended to establish a ranch there. I valued the land at about $40 an acre. I found there about 500 head of horses and 400 head of cattle. I did not count the horses or cattle. All the horses and the horned cattle had the Griffith mark, because I saw the Griffith mark on the cattle and horses, and because I bought the brand. I saw every one of the horses and cattle that I bought, except two mares not branded. I saw every one that I found. I could not say how many I saw, because up to the present time some are astray. I must have seen about 500 head of cattle and horses, more or less, the first time; I estimate that number. I looked at each one of those 500; it took us about 2 days; the rodeo took us about 2 days. I swear that I saw the Grif-

fith mark on all those horses and cattle, numbering about
173 500, more of less. I saw the two that had no brand upon them.

The further examination of this witness was postponed by consent of counsel until to-morrow, March 24th, 1876.

Attest, &c., JOS. F. O'BEIRNE, *Comm'r, &c.*

MARCH 24*th*, 1876.

Present: Counsel as before, and witnesses.

Cross-examination resumed:

There were 2 claims to the Cieniguita, and I purchased the 2 claims from Alexis Godey. I mean that the 2 claims were 2 tracts of land adjoining. I do not know from whom Godey purchased those 2 claims. I was informed prior to the purchase of the Cieniguita that one of those tracts was occupied by sheep, and if that land was not cleared of those sheep I would not make the purchase. Immediately after I stated that I would not purchase this land if the sheep were not cleared off it; the sheep were removed from the land, and I purchased it. One hundred and sixty acres each were embraced in these 2 claims
174 The water ran across both claims, and there were springs on both claims. I do not know on which tract the sheep were. I do not know whether the house & corral were on the 160 acre preemption claim of the Griffiths or not. The tract of 160 acres of land, which I valued at $40 per acre, is the one which has the greater number of springs upon it. I do not know whether the house & corral were on that tract or not. My partner Peres had nothing to do with these negotiations. I negotiated with Godey only, and with no one else. I cannot say that Godey represented any one else in these transactions than himself. I was in the habit of purchasing large numbers of cattle each year. In 1870 & previous I bought twice as many cattle as I slaughtered. In 1870, I had about 50,000 head of cattle; that was early in the year 1870, when I had the largest number. In 1867, I purchased the largest number of cattle. I purchased between 15,000 and 20,000 head of cattle. I knew the Griffith stock of cattle and their quality. I knew part of the Griffith range, and the water I knew well. The Griffiths had a very large number of cattle there, considering the range they had, prior to and subsequent to Jack Griffith's death. The bulk
175 of the stock of cattle of mine in 1870 was in California, in the San Joaquin Valleys. It was after the purchase of the land by me from Godey that the cattle suffered. It was after that that I took 11,000 head of cattle to Nevada. It was after the purchase of that land that the pasturage began to get scarce. I proposed to get the cattle to stock the range I purchased from the San Joaquin Valley, but afterwards, the feed becoming scarce, I took the 11,000 head of cattle to Nevada. Pasturage was scarce at the Griffith ranch, and I therefore took about 11,000 head of cattle to Nevada. I began to move those cattle to Nevada in the month of May,

1871. When I had those 50,000 head of cattle, I had no intention to buy other breeding cattle, because I had all I wanted. I bought these breeding cattle of Mr. Godey, because he wanted to sell the land & cattle together. He insisted on selling both land & cattle together, and I wanted the land to establish a ranch there. I don't know whether Godey would have sold the Cieniguita without the Aguagita, but they were both sold together. My intention was to buy other land in that vicinity. Those lands had no owners. They were public lands. My recollection is that I lost money on
176 the cattle I bought from Godey. My relations with Mr. Godey at present are friendly. We are not enemies. If I had not been so unfortunate, then I would have placed 10,000 head of cattle there. That was my intention. All the cattle I took to Nevada, I intended to place on the Cienigita. I was in Kern county, either in July or August, 1870, either in the early part of July or August, 1870. I was in the habit of going there 2 or 3 times a year.

Redirect:

When I stated yesterday that I had spoken to no one as to what I should testify in this case, I omitted to state that I had spoken to Mr. Stetson. There were 2,000 head of cattle at San Emilio, part of which went to water as far as the Cienigita. This 2,000 head were brought to San Emilio about the time I purchased Cieneguita. I believe they were brought there after I purchased the Cieniguita. I have had other cattle at San Emilio & vicinity since 1864. Some of the cattle at San Emilio at times ranged up to the Cieniguita before I purchased it from Mr. Godey. For two years after the sale of the cattle by Godey to me I had not been at the Cieniguita, and
177 cannot say when the cattle died. The negotiations in regard to the sale to me by Godey may have occupied several months. I considered the negotiations began at the time of the sale to Marmolejo. The feed starts in Kern county immediately after the rainy season. As a general thing it begins to rain in that country in December.

Whenever we have a good rainy season the cattle begin to feed about Febr'y. In the month of Febr'y, as a general thing, the cattle begin to feed.

My taking cattle from the San Joaquin to the Cieniguita depended upon my getting other lands there. I would have brought them there as long as the other lands belonged to the Government.

Recross by Mr. JOHNSON:

I failed to bring the 11,000 head of cattle to the Cieniguita, because of the scarcity of pasturage on the range there.

By Mr. LIEB:

From the time of the Marmolejo sale until we purchased
178–9 from Godey I had no conversation with Godey. There was a conversation between Godey & myself at the time we made the purchase. At the first conversation with Godey at the Marmo-

lejo sale I offered to purchase only what then belonged to the Griffiths.

PEDRO x ALTUBE.

Subscribed and sworn to before me March 24th, 1876.
JOS. F. O'BEIRNE, *Examiner*, &c.

(Endorsed:) Opened by consent of counsel and refiled September 13th, 1878. L. S. B. Sawyer, clerk.

180 Circuit Court of the United States for the District of California.

ELLIS GRIFFITH
vs.
ALEXIS GODEY *et al.* } No. 1201.

Be it remembered that on this 13th day of September, 1878, at my office, room 1, in the United States court building, in the city of San Francisco, district of California, personally appeared before me, L. S. B. Sawyer, a commissioner duly appointed by the circuit court for the ninth circuit and district of California, PEDRO ALTUBE, a witness on behalf of the complainant in the above-entitled suit.

Edw'd Gray Stetson appeared as counsel for the complain-t, and S. F. Leib, as counsel for the defendant Godey, and Francis Johnson, as counsel for the defendant Williams.

And the said witness, having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as follows, that is to say:

Examination-in-chief by Mr. STETSON:

Ques. What is your name, age, occupation, and place of residence?

181 Ans. My name is Pedro Altube; my age is 55 years and upwards; my occupation is ranchero & cattle dealing; and my place of residence is San Francisco. I know Leopoldo Vignave. I have known him ever since the year 1859. I know Manuel Marmolejo. I have known him for the last 20 years. I remember making a purchase from Godey of the Griffith ranch & stock some years ago. This ranch was in Kern county. I had seen the ranch prior to its purchase, but had not examined it. We completed the purchase at the Rancho San Emilo, in Kern county, at the house of Marmolejo.

(The testimony of Leopodo Vignave, given on direct examination before Mr. Craig, special examiner, on the 28th day of July, 1877, is here read over to the witness, and he is asked if he remembers any such conversation, or making any such statements.)

I do not recollect anything about that conversation; those parties were living about there, but I cannot now recollect what was said.

The parties I mean were Marmolejo, a Chilian named Borja, and Vignave. I believe there is a difference between what I stated at that time & what Bignave states in this deposition. I am not now able to say whether Borja and Bignave were present, but Marmolejo was. Marmolejo was authorized by me to make the purchase. The difference is this: Bignave states in his deposition that I had
182 not seen this rancho prior to its purchase, whereas I had seen the rancho before, and had passed by it several times. It is possible I may have told Marmolejo that I was going to send my brother & Arambido to San Emilio; I mean to the Cieneguita. I do not recollect that I told Marmolejo that neither Funk nor Godey would object to it. I doubt if [it] is likely that I told them so, because for a long time prior to that I had had a great many cattle on the land, & had never had any question with them; I mean Government land in that vicinity.

Cross-examination by both defendants:

I do not know who has furnished the money for expenses of prosecuting this suit. I have not furnished any part of it. My feelings are friendly to Mr. Godey.

(Counsel argue that the above and the former deposition of Pedro Altube was taken through an interpreter, duly sworn, and that no objection shall be taken because the same does not appear on the record.)

his
PEDRO x ALTUBE.
mark.

Subscribed and sworn to before me this 13th day of September, 1878.

L. S. B. SAWYER, *Ex'r, &c.*

(Endorsed:) Filed 13 September, 1878. L. S. B. Sawyer, clerk. Open by consent of counsel.

183 *Testimony of C. S. Williams.*

Circuit Court of the United States, District of California.

ELLIS GRIFFITH *vs.* ALEXIS GODEY and C. S. WILLIAMS.

Testimony taken on the part of the defendants under the 67th rule of practice for the courts of equity of the United States, by F.W. Craig, special examiner, duly appointed by the said court to take testimony in said cause.

Present: E. G. Stetson, Esq., counsel for complainant: F. H. Laine, Esq., counsel for defendant Godey; and Francis Johnson, Esq., counsel for defendant Williams.

Counsel for the respective parties expressly waived all objections to the testimony, on the ground of informality in or want of notice of time and place of taking the testimony hereinafter set forth.

Tuesday, July 24th, 1877.

C. S. WILLIAMS, produced and sworn as a witness on the part of the defendants, deposes and says as follows, that is to say:

184 Examination-in-chief by FRANCIS JOHNSON, Esq.:

C. S. WILLIAMS, being sworn on behalf of the defendant, testifies as follows:

My name is C. S. Williams; am 55 years old; reside at San Emizdio ranch, Kern county; occupation, stock dealer; am one of the defendants; have resided here since 1869; have been engaged in stock business about 25 or 30 years; I have a partner, Mr. John Funk; have been in partnership about 9 years; have been in business of stock raising since I have been in this country. I live about 12 or 14 miles from the Griffith ranch; about one mile from Mr. Godey's. A man by the name of Henry occupied the range between our place and Griffith in 1870. The season in 1870 was a short one, from last of January to almost first of April. If we don't have rain we have but little feed. That year was very dry. The feed was short there, as well as everywhere else in that section. I had a ranch in 1870 on the San Emigdio. In 1873 land there was worth about $3.00. The San Emigdio ranch was better land than the Cieneguito. Land was higher in 1873 than in 1870. I could have bought the San Emigdio ranch in 1870 for $20,000; in 1873 it was worth $60,000.

185 The water privilege gave the Cieneguito ranch its value. I am acquainted with Ellis Griffith. Some time after the death of his brother Ellis Griffith located or pre-empted the Cieneguito ranch, and after the auction sale of the ranch, that day or next, I learned that he wanted to sell it to some man coming from Santa Barbara. I heard that he asked $500 for it.

Question objected to and answer.

I want to see Ellis Griffith about the matter. I went as far as the Pleyto creek; when I got there I met Mr. Godey; I asked him if he knew where Mr. Griffith was, and he told me he was at Mr. Rosemiries, as near as I recollect. I told him I came over to see Griffith about buying the place.

Complainant objects to the conversation being taken down between Mr. Godey and Williams as irrelevant, immaterial, and hearsay evidence.

I told Mr. Godey I heard he had offered to sell at a certain price, and there was a man coming to buy it. I told him I heard the price was $500.00. Godey was going to Hudson & Rosemire's, and went on there as I supposed. Mr. Godey told me Griffith was badly crippled and hurt, which is the reason I did not go on to see him. I gave up the idea of purchasing, as Mr. Funk was away, and I thought I would wait till he came home; we are partners in

186 all business. I do not know anything of the appraisement of the Griffith property. Mr. Godey told me that he had some springs about 3 miles from that place (the Cieneguito) which he would rent or sell me, which is the reason I did not go on to see Griffith about buying from him. I attended the auction sale of

personal property of the Griffith estate, as I had been talking with cattle men about the stock to be sold. I saw from the conversation that they were not willing to buy stock at that season of the year on account of the scarcity of feed, and I thought I would go, and if they sold reasonably I would buy. I never talked with Godey about the purchase. I heard of sale that was to take place by talking with stock men; I did not, I think, see any notice; I presume it was generally known the sale was to take place, as the stock men all seemed to know it; I think I see a notice of the sale at the ranch when I went over; I did not go alone to the sale; Charles Kruse [went] with me; I asked him to go along so that if I bought property to go my security, as I [had] but little money at the ranch. I cannot say who were at the sale, as nearly all were strangers to me; I saw Godey, Rosemire, Krouse, and several others I did not know. Others bid on the property besides
187 myself. Rosemire bid against me. I cannot state the lowest bid made. I think there were several bids made back and forth, openly and publicly. I saw horses and cattle, but cannot say how many. All the horses were, I suppose, there. Do not know whether all the cattle were or not. It did not matter, as I bought the brand, and knew pretty well what the stock was. It is customary to sell all the stock in selling the brand, as the brand carries the stock. I did not know exactly how many cattle there were, except from the inventory. I paid more attention to the horses, as I knew less of them. The cattle were in the habit of running with ours on the same range. They were very poor in flesh. At that time cattle were very low, and it would be hard to fix the value of them. Had they been worth more than they brought, there would probably have been more bidders. The horses were very poor, and many of them dying. Cattle and horses were generally poor that season, owing to the feed. The Griffith horses had the distemper very badly; worse than other horses around.

Ques. Did you ever tell Mr. Fleck that Godey and a Frenchman bought the stock at the auction sale, or that Mr. Godey and
188 a Frenchman stepped one side, and had a conversation, and the sale was all over?

Complainant objects, on the ground that no proper foundation was laid for contradicting witness Fleck.

Ans. I never did. There was no Frenchman that I saw, but Mr. Mr. Godey. I never talked with Mr. Fleck. Pedro Altude was not there at the sale. He had nothing to do with it. I never talked with Mr. Godey about making a sale of the property to Pedro Altude, or any one. We decided upon making the sale some time afterward, when he, Godey, spoke about selling me the springs he had. He told me that Altude had been talking about purchasing the springs. I asked him what he would take for them. He told me he would sell them to us for $2,000 or $2,500, and that he had asked Altude $4,000 or $5,000 for them. Some time after Mr. Godey said Altude would give 4,000 or 5,000 for the springs if he could get the Griffith stock and Cieneguita range with them. I

authorized Mr. Godey to negotiate the sale to Altude for me. When the sale was made it included the Griffith stock and brands and Griffith range, and the Godey springs, with the Mackey claim, was included in the Griffith range. Two notes were given in
189 payment, one to Mr. Funk and one to myself. I do not remember now how much I got. I do not know why Altude gave so much as he did, unless it was to establish a stock range.

Ques. Was it not because the Cienguita and Mackay claims and the springs controlled a large portion of public land which was used by Mr. Godey for witness' stock?

Objected to, as leading, and withdrawn.

I heard that Mr. Altude intended to bring other stock and put on the range; this would injure Godey and myself greatly; the matter of damages entered into consideration in making the sale to Altude. I made purchases of other stock in that neighborhood in 1870—about one month probably after the auction sale in 1870; they were nearly all cattle and much better stock than the Griffith stock; they were bought at private sale.

[Ques.] How did the price compare with the price paid at the auction sale?

Objected to by complainant, on the ground as incompetent and irrelevant, and not admissible to prove the value of the Griffith stock.

Ans. I consider the cattle I bought afterward at private sale was a better bargain than the Griffith stock. I never entered into
190 a conspiracy with Mr. Godey to defraud Mr. Griffith out of any property. I do not know of any act of Mr. Godey's tending to defraud Mr. Griffith out of any property. I never had any agreement with Godey about the purchase. I understood that some of the stock purchased at that sale died that season. I think a prudent man would have sold the stock at that time instead of trying to hold it.

Cross-examination:

I consider myself a prudent man. The reason I bought the stock was because they were running on our range. I did not move the cattle; the administrators could have done the same, I suppose. I made a very good trade, I consider; the administrator might have done the same thing. I do not know whether he could or not; my acquaintance with Mr. Godey was very limited previous to 1870. Since then my relations with him have been those of a neighbor on good terms. Griffith had a little house at Cieneguito. It was west from my house. Henry had a shanty fixed up about west from my house—about 6 miles distant—directly between me and Griffith, or nearly so. I was over the Griffith range but very little
191 in 1870. I was not at his cabin but once that season. I was on the portion of the Griffith range that was next to ours; Godey first spoke to me about the springs a few days after the auction sale; I do not know what name the springs had; I understand that Godey had a patent to the land the springs were on; it con-

tained 80 acres, I understand; I do not know that it was called Aguagita at that time; we called them the troughs; I was not familiar with Spanish names; after the Altude sale papers were made out, a bill of sale to Pedro Altude, signed by me, of the stock and brand; I did not give any other papers; Mr. Godey, I think, had a deed of some kind; after the auction sale I got a bill of sale from Mr. Godey covering the stock and brand; when I went to the coast, some 5 years ago, I left them there, and I have never since seen them; I suppose they were destroyed. I heard the auction sale was to take place by talking with the neighbors; I do not know who I spoke with about it first; I do not think I spoke to Mr. Godey about it previous to the sale; I lived about a mile from Mr. Godey; I do not think Mr. Krouse bid at the sale; Mr. Rosemire is the only bidder I remember; Mr. Rosemire is here in the room; Mr.

192 Rosemire, I presume, was a man of means; I do not remember how many bids I made. James Crocker lived in Kern county [in] 1870; was in the stock business; lived about 45 miles from me; he was associated with Lux & Miller, as I understood; he was not present at the auction. I do not remember seeing Altude at the time; he was in the habit of visiting the county frequently after the auction sale; do not [know] whether he was in the habit of coming so frequently before as he was after the sale; he was a stock dealer of considerable note. I do not know of my own personal knowledge that any of the Griffith stock died that season.

C. S. WILLIAMS.

Subscribed and sworn to before me, this 24th day of July, 1877.

F. W. CRAIG,
Special Examiner.

When the sale was made it included the Griffith stock & brand, the Griffith range, the Mackay claim, which was considered in the Griffith range, and the Godey springs. Mackay was to be removed.

193 CHARLES KROUSE, sworn for defense, says:

Examination-in-chief by FRANCIS JOHNSON, Esq.:

My name is Charles Krouse; live in Kern county; have lived here since 1868; age, 44; am a stock man. I remember attending an auction sale [in] 1870 of the Griffith property with Mr. Williams; Mr. Rosemire, Godey, Williams, and some Spaniards whose names I did not know, were there; as near as I recollect Mr. Godey waited till about 12 o'clock, when he said no one was coming, and they might as well commence the sale.

The cattle were bid off publicly; Mr. Rosemire bid besides Mr. Williams; I did not see anything between Mr. Godey and Mr. Williams to make me think there was any combination to bid off the stock cheap; Mr. Williams wanted me to go with him, as he wanted to give security if he bought any of the property; we went together; I do not remember how many bids were made; I had no interest in the purchase by Mr. Williams; I know that range and stock; a

good deal of stock died on the range in 1870, about Christmas time; a good many died in 1871, in the spring; I know this of my own personal knowledge.

194 Cross-examination:

I do not know how many Spaniards were at the sale; I know of two; do not know whether there were any more or not; they were pretty good kind of men; they worked by the month; I do not recollect what time of day the sale was to begin; we got there, I think, about 9 o'clock in the morning; I did not see any notice of the auction anywhere; I lived about 14 miles from the place of sale; I lived in the same house with Mr. Williams; I was in his employ then; I had a few horses at that time; Mr. Williams said he wanted me to go his security if they wanted any; I could not tell exactly what I was worth at that time; thought I had enough to pay for what that would bring; I heard of the sale a couple of days before I went to it; I heard it by people talking of it; some stock die on these ranges nearly every winter; I am in Mr. Williams' employ now.

Sworn to before me, this 24th day of August, 1877.

F. W. CRAIG,
Special Examiner.

195 J. V. ROSEMIRE, being sworn for defense, deposes and says:

Examination-in-chief by T. H. LAINE, Esq.:

My name is James V. Rosemire; reside in Kern Co; have resided here 23 years; 40 years of age; occupation, rancher and storekeeper. I have known Alexis Godey over 20 years. I knew Jack Griffith in his lifetime; knew him 7 or 8 years before his death; know Ellis Griffith; known him 7 or 8 years previous to Jack's death. I resided some 32 or 33 miles from Jack Griffith at the time of his death. I was not acquainted with the range about the Cieneguito; did not know the Griffith stock before his death. I was one of the appraisers of the estate. I knew Mr. Fleck, another of the appraisers. The appraisement was made in August, 1870, I think; don't remember certainly. Fleck and I went together to appraise the property of the estate. I think Mr. Godey went with us; am not certain. I found Morales, one of the vaqueros, at the ranch. Jesus Mendiaz, Jose Antonio, and Ellis Griffith, were also there. We arrived at the ranch about noon. We found horses and cattle there; the horses were in the corral; there were 142 head; we counted them, and put the number down on the appraise-
196 ment. I did not know of any horses belonging to the estate not being there. I asked the vaqueros if they were all there, and they said they were.

Complainant objects to this answer, and moves to strike it out, as hearsay.

Ellis Griffith was there at the time, and said nothing about the stock not all being there. We found the cattle near the corral;

they were not inside, but were gathered up by vaqueros, and guarded by them. We counted the cattle; there were, according to my recollection, 127 head, big and little; the inventory stated the exact number. We had no means of knowing whether the cattle were all gathered up or not. We made no inquiries regarding the cattle as to whether they were all there. Mr. Fleck returned with me.

Ques. Did you and Mr. Fleck observe any cattle that day with the Griffith brand on that were not appraised that day?

Objected to by complainant, as incompetent, because asking this witness to tell what both persons saw.

Ans. We did not.

Mr. Fleck said nothing to me about some of the cattle not being gathered up that I recollect of. I would have remembered
197 it if he had. We remained there 3 or 4 hours, until the cool of the evening. I do not remember whether Ellis Griffith came back with us or not. We appraised and put into the inventory all the property that we saw. I recollect of Mr. Godey paying Ellis Griffith money; I do not remember how much or when; it was after the death of Jack & after the inventory was taken; the money paid was for a deed. All I remember is that Julius Chester came down to our place and drew up a deed; after they got through I went in the store and paid the money to Griffith for Godey; it was Godey's money I paid him. The deed was drawn there at the time by Julius Chester; I think Mr. Godey requested the deed to be drawn; I think the deed was read to Mr. Griffith, and he thoroughly understood it. I recollect of Mr. Godey coming to the place one night for money, and said he wanted it for Ellis Griffith. I do not think that Griffith was [with] him.

Complainant objects to the last answer, as to what Mr. Godey told him, and moves to strike out as hearsay.

This was a short time after Jack's death. Mr. Godey got money at that time; don't remember the exact amount; somewhere
198 between $800 and $1,000. I never heard Ellis Griffith say anything about receiving money from Godey. I do not know whether it was before or after Godey's appointment as administrator that Godey came after the money. I know of a doctor's bill being presented of Jack's sickness—the amount was $400 or $500; don't know the doctor's name; he was from San Luis Obispo. Mr. Godey showed me the bill. A notice of the sale of the property was put up at our place; it was put up some 10 or 12 days before the sale. I was at the sale; I bid at it; I made the first bid, of $1,500, and made another of $1,900; that was all I made; I did not make any more bids, because that was about the size of my pile, and I thought it was enough for the property. Dr. Williams bid $2,000, and got the property. The sale was made openly and publicly. I know Pedro Altude; he was not at the sale.

Ques. In your judgment, was the property sold at a reasonable price?

Objected to by complainant, as incompetent, because it is not shown that the witness is familiar with the values of such property.

Ans. In my judgment, the property brought its reasonable
199 value. I would not give any more for it.

I was acquainted with the value of the property at that time. Mr. Hudson and I bought some cattle that year. Ellis Griffith was not present at the sale; the reason he was not there was that he was thrown off a horse and had his shoulder dislocated; it happened on the day of the sale; he was in company with me and Mr. Godey going to the sale; I think Ellis was advised what the property brought soon after the sale; am not certain. There was a great scarcity of feed in 1870, and the same in the spring of 1871; Mr. Hudson and I lost a great many sheep that year; a great many cattle died in 1870 and 1871; Beale & Barker lost about 10,000 head of sheep in 1871.

Cross-examination:

I do not exactly remember whether it was in the latter part of 1871 the feed began to get short; the winter of 1869 and '70 was an average winter; after an average winter an average season for feed should follow; after an average winter the feed is pretty good till June or July; about July and August, and after we begin
200 to lose stock; quite a number of cattle died in 1870; 1871 was a little worse season than 1870. I have not dealt much in cattle, mostly in sheep. I never carried on a cattle stock ranch; I never bought and sold cattle as a business, but have been on ranches the last 20 years where they dealt in cattle. I do not know that Mr. Godey ever spoke to me about going to the auction; I went there to buy the cattle; I went there with him because he happened to be at our place at the time. I saw a notice of the auction put up at our store; I think I saw one also at Havilah, which was the county seat; I think it was on the court-house. My relations with Mr. Godey were always friendly; I used to act as sort of a banker for him and wrote letters for him; he deposited money with us frequently; I did not have many other business dealings with him. I am certain the deed drawn by Chester was read to Ellis; I think he can read; he can write his name I know. I don't know of my own knowledge what stock Griffith had. The vaquero Morales used to work considerably for Jack, and I think he knew whose employ he was in at the time of the sale; I don't know whose employ the other vaqueros were in; I do not
201 know whether all three of the vaqueros were in the employ of Mr. Godey at that time or not. I understood that some of the stock was sold to Marmalejo—don't know it of my own knowledge; I never saw the cattle that were sold to Marmalejo. 1870 was not a good year to buy cattle. The reason I wanted these cattle was, I had range for them; if a person had range for them it [was] not a good year to sell, it was not good policy.

In 1870 Hudson & Rosemire's was a place of general resort; we kept a store there; the nearest store from us was at the Tacuya ranch;

it was some 5 or 6 miles up in the mountains in an out of the way place.

J. V. ROSEMYRE.

Subscribed and sworn to before me, this 24th day of July, 1877.
F. W. CRAIG,
Special Examiner.

202 Examination adjourned till Wednesday, July 25th, 1877.
F. W. CRAIG,
Special Examiner.

WEDNESDAY, *July 25th*, 1877.

Examination resumed pursuant to adjournment.

203 *W. H. Coons.*

W. H. COONS, sworn for defense, says:

Examination-in-chief by T. H. LAINE, Esq.:

My name is W. H. Coons; reside in Kern county; have resided here 14 years; age, 42 years; am now a miner; was sheriff of the county in 1870. I knew Jack Griffith in lifetime; have known Mr. Godey about 11 years. I saw a notice of the sale of the Griffith property in 1870 posted on the court-house door. Havilah was then the county seat. All legal notices were usually posted on the court-house door. I do not remember seeing a notice posted in Walker's Basin, or anything else that I remember of. I was required by Mr. Godey to make the sale of the property. I did not make the sale, as I had some subpœnas to serve the day before, and did not get there in time.

W. H. COONS.

Subscribed and sworn to before me, this 25th day of July, 1877.
F. W. CRAIG,
Special Examiner.

204 *W. W. Hudson.*

W. W. HUDSON, being sworn for defense, says:

Examination-in-chief by T. H. LAINE, Esq.:

My name is W. W. Hudson; reside in Kern county; age, 56; have resided [in] this county 16 years; am a ranchero; have known Mr. Godey about 16 years; knew Jack Griffith in lifetime, from 1862 up to his death. I am a partner of Mr. Rosemire's. I gave Mr. Rosemire instructions what amount to bid on the property at the sale.

I estimated it at $2,000. I gave him the instructions before I left for San Francisco; also wrote to him from Firebaugh's, on the San Joaquin, not to exceed $2,000 on his bid, as it was all it was worth.

I have had experience as to the value of stock, an extensive one; I knew the stock.

I do not know of my own personal knowledge of any of the stock being sold to Marmolejo.

I knew the character of the stock sold to Marmolejo by enquiry. I heard it was the best. I saw some of the Griffith stock
205 at the general rodeos. I also knew the character of the stock by an exchange made by the owner of Liebre ranch, of which I was superintendent, with Griffith, 1861 or '62.

I saw notice of the sale posted on our store door.

Cross-examination:

I have been over the Griffith range. I cannot say how many times; more than once; don't [know] when I was over it last; have been over it since the death of Griffith. I did not see any of the Griffith stock near the time of his death. I lived at the store, some 33 miles from the Cieneguito; there are two general rodeos every year.

I saw some of the Griffith cattle every year from 1862 to 1870. I did not go to all the rodeos every year. I had men at
206 them. I don't know how many I attended.

W. W. HUDSON.

Subscribed and sworn to before me, this 25th day of July, 1877.

F. W. CRAIG,
Special Examiner.

207 *Luz Bacanero.*

Dr. A. A. Mix, of Bakersfield, sworn as interpreter.

Examination-in-chief by T. H. LAINE, Esq.:

LUZ BACANERO, being sworn for defense, deposes and says, through his interpreter:

My name is Luz Bacanero; age about 40; live in Kern county; lived here about 3 years; occupation, taking charge of stock; am a vaquero; I know the horses and cattle formerly belonging to Jack Griffith. I knew it at the Cieneguito ranch. I had charge of the stock about a year or more before I went to the San Emidio ranch to live. Pedro Altude put me in charge of the stock, who was then living in San Joaquin. When I was put in charge of the stock they were in charge of Juan Quilgmaco; Quillimaco was the vaquero of Mr. Williams. There were about 130 head of the cattle and about 140 or more head of horses. When I went there the first season there were more cattle lost than gained. At the time I received the stock the pasture was very bad; there had been no rain, and it was a dry season. I abandoned the cattle on the plains and took the horses to the mountains the next spring; it was done in order to favor both cattle and horses, as there was not feed enough for all. Mr. Altude never came to the ranch while I was there.

208 Cross-examination:

I have lived in Kern county 3 years at San Emidio and one year at Cieneguito. I lived in San Joaquin before I came to the Ciene-

guito. I came from San Joaquin to take charge of these cattle. Juan Pico, another vaquero, came with me from San Joaquin. I alone had charge of the stock. Pico went back to San Joaquin. I am not in the employ of Altude now. I left his employ about 3 years ago. I went in the employ of Manuel Marmalejo then. I staid in the employ of Marmalejo 5 or 6 months. I went then in the employ of John Funk and staid with him 3 years; am still in his employ. I cannot read or write; cannot sign my name. I counted the Griffith stock when I branded the young stock. It was in the spring when I took charge of them, in the month of January. It was in the winter time, and there had been no rain up to that time; afterwards there were light rains, but no pasturage came up; the day after I came from San Joaquin we commenced to brand. We had a rodeo; four vaqueros helped me brand—their names,

Theodora Dalmuzuela, Jaste Gumocuido, and the other

209 one's name I do not know. We went over the Cuyama, San Emido, Cariso, Templor, Santiago, and Santa Maria ranches and the Tules to find the cattle. I counted 130 head of cattle, or there might been more; there were 150 head, about, including calves; deduct from the 150 head the number I counted, and that will give the number of calves. I don't think I branded over 8 or 9 calves; am not certain, because they had branded some calves before I took charge. I counted 7, 8, or 9 calves; don't remember; did not amount to 10. I know the Griffith brand. (Witness draws the brand on paper, as shown in margin of this sheet ( )). I know Mr. Godey, the defendant; have known him since the time I came to the Cieneguito. I have never spoken to him about this case. I came here to testify, because the Patron told me to stay here; don't know whether by order of the court or not.

his
LUZ x BACANERO.
mark.

Witness:
A. A. MIX.

Subscribed and sworn to before me, this 25th day of July, 1877.
F. W. CRAIG,
Special Examiner.

210 *Juan Morales.*

JUAN MORALES, being sworn for defense, deposes and says, through his interpreter:

Examination-in-chief by T. H. LAINE, Esq.:

My name is Juan Morales. I was born in 1820. I live in the mountains in San Luis county. I take charge of my animals, and when a chance offers I work. I knew Jack Griffith since 1864. I was in his employ off and one from 1864 up — the time of his death. I was in his employ at the time of his death. I was at Pleyto creek on his ranch, the Cieneguito. I knew his horses and

cattle; I managed them. When he died he had from 130 to 140 head of cattle, and he had a few more horses than cattle. When I say I had charge of his horses and cattle, I mean that whatever was done in the way of branding any of the stock, I did it. I know of Griffith having 23 head of cattle in Santa Barbara county, because I parted them out. Griffith gave them to an American to milk: the cows had calves; this was in the year 1870, about 2 months before he died. I did not assist to drive them to Santa Barbara, only assisted to drive them out of the ranch; they were the best of the stock to milk; they were gentle cows. I took more care of the stock than
211 Griffith did. I know of Griffith selling a cow to J. C. Crocker. I do not remember what year before his death; it was a wild cow; it did not pay to bring it to the ranch, which is the reason it was sold. I do not know how much Crocker was to pay for it. I know Ellis Griffith; have know- [him] the same time I have know- Jack. I was at the Pleyto ranch when Jack died. I saw Ellis a short time after Jack's death—about 15 days, more or less. I saw him at my house at Pleyto; he and Godey were together. Ellis went to the Cieneguito. I went with Ellis & Godey, & met the surveyor at the Sieneguito. I had charge of this stock after Jack's death. There were two other men at Sienaguito from San Luis when we got there, and Ellis put me in charge, and Ellis sent these two men away; the two men were taking charge of the cattle & horses for Jack Griffith. I know Thomas Fleck. I know when he and Mr. Rosemire were there to appraise the cattle & horses, because I got them together; I got all the horses and cattle together. There were four of us in all doing it; it took us half a day to do it. The horses were put in the corral; the cattle were outside, guarded; I am sure of this. I am satisfied, from my knowledge of the stock, that they were all there; they were much reduced in numbers. Ellis did not stay much
212 at the Sienaguito after his brother's death. I was there taking care of the stock. Ellis paid me for taking care of it. When I delivered up the stock he paid me $63 in coin. By delivering up the stock I mean when they appraised it. I know Marmalejo; I know of some of the stock being sold to Marmalejo—45 head of picked cattle; they were the best of the stock. Ellis Griffith was there when it was sold and delivered. Ellis told me I had to get up this stock one day before, to deliver them to Mr. Godey. Ellis came from San Luis with the doctor, and the same evening they passed from the Sieneguita to Godey's house; Ellis said he had business with him. Ellis came back from Godey's & told me to have the cattle up by the following morning, as he had to deliver 50 head of stock to Mr. Godey—50 choice, select stock—and there not being 50 choice stock, he took 45. Ellis said he had to pay the doctor and funeral expenses, $1,000. He did not say from whom he was going to get the money; he was going to see Mr. Godey, as he had business with him. He did not say why he was going to deliver these cattle to Mr. Godey for. Jack Griffith never had 300 head of cattle from 1864 to his death. I never branded over 25 calves in
213 any year. I never counted the horses until Jack died; there were about the same number as of cattle; there were three

brands of them. I had shaved the tails of some of the horses to make ropes of.

Cross-examination:

I am not in the employ of any one now. I have worked for Mr. Godey; worked for him in 1867 to 1870; since then I have worked for him one or two days at a time at rodeos. I have not spoken a word to him about this case. I never spoke to him about the Griffith stock. Mr. Godey sent for me to come here about some horses that [were] stolen. I came here to have a rifle fixed to-day, and was brought in here. I live about 20 leagues or more from Mr. Godey's house. I came to Bakersfield day before yesterday; my little boy came with me; no one else. I cannot read or write. When I say Jack Griffith had 130 to 140 head of cattle, I mean he had that number besides the ones at Santa Barbara. When I said the cattle were reduced, I meant they were bunched together. I do not know the name of the surveyor I spoke of, nor where he lived.
214 The cattle were bunched together because there had just been a rodeo; the rodeo was in March or April. I don't remember when I drove the cattle up for appraisement; the rodeos are held twice a year, one in March & April, and one in October & November. The $63 I received from Ellis was for work I had done for Jack Griffith, and work done for Ellis. I never worked by the month; he paid me $1.50 per day; the $63 was paid to me when they sold the stock to Mr. Williams. That was all they owed me up to that date. I did not work continuously, but 3 or 4 days at a time, just as they wanted me. I explain having charge of the stock and not working all the time by saying I was always there at my house, and when they wanted any branding done or cattle driven up I was there to do it, and also had horses to break. I do not know the doctor's name who came there. I know that Griffith never had 300 head of cattle at one time, because I was always there. I never counted until they were appraised.

Redirect examination:

In 1867 Ellis Griffith went to Los Angeles, and two years af-
215 terwards came back, & on his way back stopped at my house all night; the next day Ellis went toward Los Angeles, but did not stop; the next day after that Jack came to my house and told me he had given Ellis a licking and drove him away, as he did not want him about him.

Complainant objects to the testimony as to what Jack told the witness, and moves to strike it out as hearsay.

The next time he came to the ranch was after Jack's death in 1870; he was not at the ranch in 1870, until after Jack died, and if he had not died Ellis would not have come back.

Cross-examination:

I never had any disagreement or quarrel with Ellis. When I

said Jack Griffith had 130 to 140 head of cattle, I meant that he had that number besides the ones I sold to Marmalejo.

Redirect examination:

I worked by the month for Godey; I worked from 1868 to 1870; if I had not got got sick, I would be working for him yet.

his
JUAN x MORALES.
mark

Witness:
A. A. MIX.

216 Subscribed and sworn to before [me], this 25th day of July, 1877.

F. W. CRAIG,
Special Examiner.

217 JAMES C. CROCKER, being duly sworn for defense, says:

Examination-in-chief by T. H. LAINE, Esq.:

My name is James C. Crocker; I reside in Kern County; have resided here nearly ten years; age, 47; occupation, stock raiser. I knew Jack Griffith in his lifetime. He had a cow running in my place, and he came there and took her away several times; she came back, and he then requested me to buy the cow. The cow was on my place at the time of his death. Before I heard of his death I drove the cow off. I afterwards learned that Mr. Godey had the property in charge, and I paid Mr. Godey twenty-five (25) dollars for the cow, the price that Mr. Griffith asked for her. I bought the cattle from Mr. Altude on the Sieneguita ranch; did not buy the horses. I made the purchase two years ago this summer, I believe it was. I believe we will get 200 head. Have not found that many yet. That would include everything but this year's calves.

Ques. What did you pay for the stock?

Objected to by complainant, as incompetent, irrelevant, and immaterial.

Ans. I bought the stock and a piece of land together, the Agùagito ranch. I paid $3,500 for the whole. I am acquainted with the value of such property, I think.

218 Ques. Was thirty-five hundred dollars a full, fair price for the property at the time you bought it?

Objected to by complainant, as incompetent, irrelevant, and immaterial.

Ans. It was more than it was worth at the time of Griffith's death I presume he had about 300 head of cattle; that was what they were generally estimated at by people who knew; that would include all branded cattle. Cattle were worth more in 1870 than when I bought the cattle. Stock cattle were worth in 1874 from $5 to $8 per head. In 1870 these lattle were worth $15 per head. I never paid Godey any other money than this $25 on account of the Griffith estate.

Cross-ex.:

The term branded cattle includes yearlings and upwards. According to the rule there should have been 100 unbranded cattle. There was a considerable loss of cattle between the years 1870 and 1874; caused by the drougth. Our loss was less on the Sienaguito than most any other place. The loss during those years would not be over 20 per cent. When I spoke of the number of cattle Griffith had I meant at the time of his death, & a year or *or* two be-
219 fore & after. I do not know how many horses he had at the time of his death. They were scattered over the range, & I never saw them together. When I said the stock was worth $15 per head, I meant the branded cattle alone. The unbranded ones I suppose would be worth about $5 per head. When we buy stock cattle the unbranded ones are never counted.

Redirect:

There should have been 700 or 800 head of cattle when I bought them according to the rule, providing there were 300 head in 1870.

Ques. Have you any certain means of knowing there were 300 head of cattle at the time of Griffith's death.

Objected to [by] complainant, as leading in form.

Ans. I have not. I never counted them. I arrived at the conclusion that there were 300 of them by working them around and bunching at watering places. It was a matter of judgment. I never saw them altogether in one bunch.

Cross:

220 I have been in the business of stock raising since 1850; have had a large experience in it. I am a partner of Miller & Lux in this county.

J. C. CROCKER.

Subscribed and sworn to before me, this 25 day of July, 1877.

F. W. CRAIG,
Special Examiner.

221 *Leopold Vignave.*

LEOPOLD VIGNAVE, being duly sworn for the defense, deposes and says, through his interpreter.

Examination-in-chief by T. H. LAINE, Esq.:

My name is Leopold Vignave; I reside at San Emigdio; age, 40 years; occupation, store-keeper. I know Pedro Altude. I have been in his employ from 1860 to 1867. I know of the purchase of the Sienaguito and Agugito, in November, 1870. Altude had never seen the Sienaguito range and stock before the purchase. I heard Altude state his reason for making the purchase the day he made it; it was in the house where I lived with Marmalejo, at San Emidio,

in this county. He said he did not buy the stock or ranches for any interest he had in it, but for two friends. Marmalejo asked him why he bought it without seeing the ranch and stock, as it was of no value. Altude said it was for the purpose of two friends; his intention was to bring his stock from up above, where there was no room for it, & was going to turn it loose on the Sienaguito, and that his stock would run on the Cuyama and the San Emidio, and neither Funk nor Godey would object to it; there were 3 friends going to bring up stock; he did not say how much they were going to bring; they were Altude, Arambide, & Garat; the season of 1870 was more
222 dry than good pasture; that season the feed was bad; 1870 & '71 were bad, and 1872 was worse, so that all the cattle were removed from the San Emigdio.

Cross-examination:

I know that Altude never saw the Cienaguito, because I worked with him 7 years before that. I left him and went to San Emidio, and Altude never came to Sienaguito to see it.

I lived in San Emigdio since 1868. I did not go to Sienaguito every day when I lived at San Emidio. I knew it before that, when I lived with Altude. In 1868, '69, '70, & '71, Altude came to Kern county to buy stock; he came once a year. It was the same year that Altude bought the ranch that I heard the conversation between him and Marmalejo; don't remember the time; it was after Altude made the purchase; the same day; they made the purchase at Marmalejo's, and they went to Godey's or Funk's house to make the papers out. I heard the conversation, and Marmalejo told Altude to ask me what kind of a ranch it was, as I knew it better than he did.

Borge Fernandez was there, and a servant. I never heard
223 Altude say anything about purchasing the ranch before he did do so.

Complainant objects to the answer as to Marmalejo telling Altude to ask about the ranch, as hearsay, and moves to strike it out.

L. VIGNAVE.

Subscribed & sworn to before me, this 25th day of July, 1877.

F. W. CRAIG,
Special Examiner.

224 ALEXIS GODEY, being duly sworn, and says:

My name is Alexis Godey; age, 59; reside at San Emigdio, Kern county; occupation, stock-raiser; have resided in Kern county since 1853. I first became acquainted with Jack Griffith in 1860. I became acquainted with Ellis Griffith at the same time. I was well acquainted with the stock & range owned by Jack Griffith before his death; at the time of his death he had about 175 head; they were average cattle, stock cattle; the beef cattle had been sold out little by little every year. He had about 140 odd head of horses; they were mares and colts, wild, and about 8 tame

horses. I knew the stock & horses by passing among them, back & forth to my ranch all the time. I mean the San Emidio, Cuyama, Pleto, and San Emigdio ranches.

I heard of Jack's death the 4th day of May, 1870, according to my recollection.

The first I had to do with his stock and ranch was when I was appointed administrator. I was appointed at the request of Ellis Griffith; he told me he wanted me to administer on his brother's estate; he said if his brother administered on it, he would swindle him out of his interest. I told him no; you better act yourself, & I will go on your bond. He told me no, he wanted me to administer
225 on it. I then agreed to do so, and went to General Freeman in company with him, and he told Gen. Freeman he wanted me to administer on the estate. A short time after Jack Griffith's death Ellis Griffith told me he wanted to go to San Luis to see about the funeral of Jack Griffith, and also the doctor's bill, & wanted me to lend him $20. I loaned him the money, and he started for San Luis. In a week or ten days after that he came to my house, at San Emidio, with Dr. Walker, in the evening. He asked me to lend him $1,000 to go to San Luis to pay the funeral bill, doctor's bill, and other funeral expenses. I declined to lend it to him. He said to me: If you will lend me $1,000, I will give you 50 head of cattle to sell to Marmalejo or to Singletary, as I saw them this evening making up a band of cattle to take up the country; I will tell Juan Morales to bunch the cattle and let you pick out 50 head for you to sell. I still declined to let him have the money. Dr. Walker told me if I would let Ellis have $1,000, it would enable him to get his money, & that I would stand no risk of losing any money, as he would tell Morales to let me have & select 50 head of cattle. Ellis said if the doctor took 2 horses from him, he would have some money left, & would return it to me.
226 I then agreed to let him have it. I then saddled up my horse and went to Hudson & Rosemire's that night. I got Rosemire up, and he went to the safe and gave me a certificate of deposit for $1,000, and went back to my house, at San Emigdio, in the morning, & endorsed the certificate of deposit and gave it to Ellis. He then said to Dr. Walker: Put this in your pocket-book for me, will you? I will tell Morales to have the cattle ready for you in the morning. The next morning I went to Sienaguito, and found Morales there with the cattle, & I parted out 45 head. Came to San Emigdio and offered them to Singletary, but he would not make any offer for them. I then went to Marmalejo and sold them to him at $20 per head for 44 head. He rejected one. I gave Ellis credit for $880. When he came back he refunded me $210. He owed me previous to this $49, that I paid to Calhoun for surveying land. He owed me for my services and vaqueros in going after the cattle $4.50. I told him what I got for the cattle I sold Marmalejo. The cattle started the day after he returned. He went with them 4 or 5 miles. He made no objections to the sale, but thanked me for it. The next morning Singletary started with his drove. Ellis Griffith and I stood at the south end of my

house when Singletary passed on the other side of the
227 creek & called me to come where he was. I went, & he paid me $75 for 3 head of the Griffith stock. I paid it over to Ellis, which was the same money he paid to Juan Morales. He had no other money. Neither Ellis or I sold these 3 head. Jack Griffith, before he died, told Mr. Funk when he would gather a band of cattle to put those three steers in his band, and pay him what he thought would be right, as he could not keep them at home. This conversation took place in my presence. These payments were made before I was appointed administrator. The first I knew of the $25 paid by Mr. Crocker was some time after the administration of the estate began. Crocker came to me and said: Aleck, I owe Jack Griffith $25.00 for a cow I bought of him; I wish you would pay it for me, and the first time I see you I will pay it back to you. I did so, and it appears in my account. It is the only money I received from Mr. Crocker. I never received any other money from Mr. Crocker on acc't of the estate. No one knew anything of this but Mr. Crocker. Ellis Griffith knew when the auction sale was coming off. He was going to the sale with me and Rosemire, and crossing the Pleto his horse threw him and hurt his shoulder and hip, and prevented him from being at the sale. He was informed the
228 next day what the cattle & horses sold for by me & Rosemire, & was very well pleased with the sale. He then offered me $450 for the cows in San Buenaventura, Santa Barbara county. I sold them to him and took his note for it, part of which he owes me for yet. I accounted to the estate for all the money. These cows that sold for $450 were some that were loaned to Mr. Alexis Blevens in Santa Barbara county by Jack Griffith. At the time the appraisement I had Juan Morales in charge of the stock as major domo. I told him to be very particular to get up all the stock, horses, cattle, and everything. He got them all up as far as I know. I should judge by the number they were all gotten up. I was present at the auction sale. I acted as auctioneer. There were two (2) bids made by Rosemire and two by Williams. They were made openly and above board. Pedro Altude was not there. There was no Frenchman there besides myself. When I heard of the death of Jack Griffith the next day I came to Bakersfield and asked Mr. Calhoun if that location, the Sienaguito, was in any danger of being jumped by anybody. Mr. Calhoun told me it belonged to nobody at the present time. Mr. Calhoun was Co. surveyor at the time. I asked him if he could go there and survey it for me. I intended to locate it for myself. He said he would go and meet me
229 the day after the morrow. I went back to Hudson & Rosemire's and met Ellis Griffith there, and then went to Sienaguito with Ellis Griffith and met Calhoun there, and surveyed 160 acres. Ellis Griffith asked me to give him the right, as he had stock there, which I agreed to, and gave up my claim and paid Calhoun $49. This was directly after Jack's death and before I was administrator. I did not persuade Ellis to make the location; he asked for it and thanked me for giving it to him; he then went to Havilah and made his declaration of intention and filed his claim. I did not

persuade him to do it; he told me [he] had done it on his return from Havilah. I loaned him $20 at that time to go to Havilah; Havilah is about 80 miles from Sienaguito. I obtained a patent to the Aguagito, I think, in 1866; Aguagito is about 3 miles from Sienaguita. I had nothing to do with Mackay about taking up a claim; his claim adjoined the Sienaguito. Mackay went there in May, 1870, after Jack's death; he had some sheep there, about 3,000 head. There was water on the Mackay claim, as much as on the Sienaguito. There are two large springs on the Aguagito. I bought Ellis Griffith's place, because Dr. Williams told me Ellis was going to sell it to some one on the coast. On that information I
230 went straight to him and told him I heard he was going to sell the place after I had given it to him. He told me he had not sold it, and would not without giving me the preference. I asked him, What can you get for it? He said, $500. I said, Very well; I will give you $500 for it. He said, Hold on awhile; won't you throw in that little balance I owe you? I said, Very well. I told him to get on his horse and get Mr. Chester to come here, as I am very busy. He got on his horse to go to Mr. Chester's, when we discovered Mr. Chester coming to Mr. Hudson & Rosemire's. Chester arrived at Hudson & Rosemire's. I told Chester that Ellis was going to his house to get him to come and write a deed. Chester said, I am here; give me pen and ink. So I got pen, ink, and paper, and Ellis Griffith told him to write me a deed of his possessory claim, the Sienaguito. I gave him the description of the land and the consideration, and he wrote it in the presence of myself and Ellis Griffith. It was then read by Mr. Chester to me and Ellis Griffith. I told him to read it slowly, so we could understand it. Ellis then signed it, and it was acknowledged by Chester, who was a notary public. We all then went to the store, and I gave the deed to Rosemire, and told him to pay Ellis the money, which he did, after deducting a note
231 he owed me and $20. I paid him over $300 in money; it was the running debt he owed me that was deducted; that squared us up to that date; he was sober that day; there was no man could say he ever saw Ellis Griffith drunk in this county; I never saw him drunk; in June, 1870, Pedro Altude asked me if I would sell him the Aguagito; he said he had stock to move from San Joaquin; I told him no; his big stock would run over my little stock; he told me he would give me $4,000 if I would give him the patent for it; I told him no; that I had use for it; after I bought the Ellis possessory right, and sold the Griffith stock to Williams, I went to Havilah and got Henry Bequette to write me a letter to Pedro Altude saying if he wanted to buy the Aguagito I would sell it to him for $4,000; if he wanted to buy the Cienaguito, which I owned as my own property, he could have it for $5,000, and the Griffith cattle and horses he could have for $8,000, or altogether for $17,000; if he wished to buy to answer by telegraph, as I might do something else in case he did not buy; he answered by telegraph he accepted the proposition & would be at San Emidio in a few days; he came to San Emidio & sent me word he wanted to see me; I went to Marmalejo's house, where he was. I said to

232 him, You are on the trade, I expect. He said, Yes; I am, if you are, but there is a big band of sheep in the way of our trade; you must get them off; if you don't there will be no trade; if you bind yourself to get them off we will trade in five minutes. The result was I agreed to get them off; Funk and I bought the possessory right of Mackay so as to get the sheep off; we paid $500; they went to draw up the papers; that is, Altude, Funk, and Hernandez, at Funk's house, and I went to Bakersfield. I told Altude the first time I went to Havilah I would draw up his deed and enclose it to him; which I did, and Williams signed a bill of sale of the stock the same day; $10,500 came to me and $6,500 went to Funk & Williams; the stock & places sold by themselves alone were not worth that amount by a long ways; the reason he paid so large amount was that he was coming with so much stock; I thought I would make him pay for it or prevent him coming at all; he told me he was going to bring 6,000 or 7,000 head of stock there, but I was afraid he would move more than that. I was afraid the large amount of stock would come on my ranch and give him the right to brand my orafomas or unbranded calves at the rodeo ground, and also eat up my range; I then had the Cuyama and

233 San Emidio left after the sale. The place sold to Altude laid between the Cuyama and San Emidio. 1870 was rather a bad year; the feed was short; a few stock died about Christmas. The winter of 1870 & 71 a good many cattle died; there was no feed in the spring. 1872 was also a bad year; feed very short; a good many cattle died that year. I never had any understanding with Williams or any one that they were to purchase the Griffith stock for my benefit. After the sale to Pedro Altude I received some benefit from the Griffith stock, as they were set down in the trade at $8,000, while my possessory claim was set down at $5,000, & we bunched them and divided the proceeds; the money for the patented land all went to me; the $13,000 was what was divided. The reason we got such a large price for the Griffith stock was that we made them pay for it; they had to buy the stock to get the range. Altude never made any proposition to buy the Griffith stock while I was administrator. I did not see him during the time I was administrator, nor until he came down to complete the sale. I accounted for all the property of the Griffith estate that came into my hands.

At the winding up of the estate there was some money com-

234 ing to Ellis—I think it was $339—which I paid to Mr. B. Brundage, his attorney, and took a receipt, which is on file in probate court.

Examination here adjourned, to meet on Thursday, July 26th, 1877.

F. W. CRAIG,
Special Examiner.

Examination resumed, pursuant to adjournment, Thursday, July 26th, 1877.

F. W. CRAIG,
Special Examiner.

Cross-examination:

I counted the Griffith cattle at the time I sold them at the auction sale. I never counted it before his death. I did not count the horses at the time I sold them, as Mr. Williams did not care about it; he said they did not amount to anything. The only means I had of knowing what amount of stock Griffith had at the time of his death was by judging it by passing among them and noticing them. Two or three years before his death I knew by the assessment roll how many were assessed to him during that time for each year. My figures
235 given of the number of cattle and horses of the Griffith stock did not include the unbranded stock—they are never included in a sale. Gen'l Freeman, that I mentioned, is J. W. Freeman, of Bakersfield, a lawyer, who was my attorney in the administration of the Griffith estate. I was unwilling to lend $1,000 to Ellis Griffith at first. It was some trouble to go in the night & get the money, & besides I was afraid he might go to San Luis & sell the whole thing out, but when he told me he would tell Morales to give me the cattle, I saw that I ran no risk & accommodated him. If he had gone to San Luis & sold everything out I would have lost a promissory note I had in my possession against Jack Griffith, and the thousand dollars besides. I knew Doctor Walker very well. I wanted to help him get his pay from Griffith. I rode in the night to Hudson & Rosemires; it was 20 miles going & 20 miles coming. I got back in the morning; it took me all night to go & come. I don't know for certain what bank the certificate was on. I had some from Steve Whipple endorsed to my order at John Parrott's bank, & some from Castle Bros., I think, or some mercantile firm in San Francisco. I do not know which of the certificates I gave to Ellis Griffith.
236 I do not know when the appointment was made. From the time I was appointed administrator I made up my mind to sell the property as soon as I could according to law. I thought my own judgment was good as anybody's about selling the property, and did not advise with anybody about the propriety of selling it. I think a notice of the auction sale was published in the newspapers. I think it was in the paper at Bakersfield, but don't remember. I don't know whether I put it in or the probate court or my attorney. I don't remember whether I paid for it or not; if I did it is in my account of administration. If it is not in my account it is very clear it was not in the paper. I think there was only one paper published in Bakersfield at that time; it was a weekly paper, as well as I remember. There may have been a paper published in Havilah, and if there was it might have been put in that, but I can't remember whether there was or not. I never acted as an auctioneer before, excepting as a joke. I never spoke to Williams about the auction sale until we got on the ground. I never spoke to Mr. Funk about it. He was not at San Emilio that I remember, nor to Singletary either. On an average I have about 3,000 head of stock; at one ranch I have about 2,500, and on the other about 500. At the San Emilio I have the 500. I
237 have about 60 head of horses. I could gather the stock up

in one day at present. I keep them pretty well together; it is my interest to do so, particularly this year. The two men spoken of from San Luis had already gathered up the Griffith stock before the appraisement, so that it took a short time only to get them together, and Morales had already received orders to gather them up from Ellis. I don't know who the man on the coast was that Williams told me was going to buy Ellis Griffith out; no name was mentioned. I don't remember when Williams told me this, but it must have been the day before I bought from Ellis. Williams told me this at the Pleto Creek, at my house. I made the arrangements to buy in the evening, and the deed was executed to me the next morning. I don't know that Ellis took anybody's advice about selling to me. It was the next morning after breakfast that Ellis started to get Chester. I remember that distinctly. In the fall of 1870 I must have had about 2,500 head of horses and cattle—might have had 3,000 head. There was nothing to hinder me from putting on more. I am on public land & also on my own. There was
238 nothing to hinder anybody else from coming on the range; but nobody wished to do it, as our rights were respected as graziers by prior occupancy. I know the duties of an administrator are to get as much as he can for the property of an estate, and I did to the best of my judgment. It was to my interest not to have a large stock to come as neighbor if I could prevent it. I should think it was near about 3 weeks after the auction sale that Ellis executed the deed to me. I never had but one deed from Ellis. After the deed was made I went to Havilah to have it recorded, & I think it was on that trip that I wrote the letter I spoke of to Pedro Altude. I have got no copy of that letter. I do not keep copies. Henry Boquette is the man who was once county clerk. I received an answer to my letter by telegraph promptly in a few days. It was sent to me either at Bakersfield or at Fort Fejon. I had business at both places. I had as much use for the Aguagito in September as in June, but, as it was a big trade, I could afford to let it go. The trade with Altude was a very profitable one. I could afford to stand the damages of large stock coming, because I got such a big price for nearly nothing. I had a patent at that time
239 for land I owned in Guyama. I had no patent for the land I owned in San Emilio. I received a patent for the land in San Emilio in the summer or fall of 1870; don't know whether it was before or after the auction sale. I had two lots in the Cuyama, containing 200 acres; on the San Emilio, 320 acres. In my letter to Altude, I told him the Griffith stock would cost him $8,000. After I bought Ellis out, I told Williams I had bought Ellis' possessory right, and then I told Williams Altude had made me a proposition at such a time to buy the Aguagito. I told him then I was going to Havilah to make him a proposition to buy the Aguagito & my possssory right I had bought from Ellis. He then said, sell him the whole, & I will put the stock against your possessory right. I told him very well; I will propose him a trade. He told me to make him pay for it, or else we will buy from you—we meant himself and Funk. In my letter to Altude, I put the price

on those three pieces of property myself; that is all that occurred at that conversation. Williams was willing to put in the stock even against the possessory claim. I thought I was getting a very good trade out of Williams, and could afford to let my 80 acres of
240 patented land go for the sake of accomplishing the trade. When Funk and I bought Mackey out for $500, we each paid half of it. After I made the trade with Altude, Williams paid the money to me for the cattle he bought at the auction sale, with the exception of $600; that he paid about three weeks after the auction sale. At the auction sale, Williams said [he] had no money, and I told him to bid up, that I would trust him. Williams paid me for the cattle after the payment was made from Altude. I did not ask him for the balance of the money after he paid the $600, as I felt sure of the money & knew I would get it, & I knew he would get money from Altude from the sale to him, & otherwise. I never thought of buying the Seneguito until I heard from Williams that Ellis Griffith was going to sell it. After I gave the ranch to Ellis, at the time the survey was made, I had no ambition to buy it. At the time I spoke to Mr. Calhoun to survey, I thought it would be a good property for me to own, and when Ellis asked me for it I thought it would be doing a just act to let him have it. An "oragana" is an unbranded and unmarked calf, not running with its mother: such an animal found in the general rodeo belongs
241 to the person on whose rodeo ground it is found, and has a right to put his own mark & brand thereon. I could have a right to claim oraganas belonging to Altude on my rodeo ground, & he would have a right to claim any of mine on his ground. I don't know whether I would have any advantage over Altude in claiming oraganas, as the larger stock has more men and would give the larger stock-owner the advantage on the outside range. For ordinary services, 4 vaqueros one need for 3,000 head of cattle; for 6,000, 6 would be sufficient; 1,500 head would require as many vaqueros as 3,000.

Redirect examination:

I sold the Griffith stock because I did not want to take any chance on seasons; if I had I would have been loser; I had no other reason; I would have been loser and the estate too.

Cross-ex. resumed:

The same reason would have induced every stock raiser to sell out if he could, although there is a difference when a man is
242 acting for himself or as an administrator.

ALEXIS GODEY.

Subscribed and sworn to before me, this 26th day of July, 1877.

F. W. CRAIG,
Special Examiner.

Defense now offers in evidence:

1st. Petition for special letters of administration, filed July 19th,

1870; certified copy marked "Defendant's Exhibit No. 1," in the estate of John G. Griffith, deceased, in probate court of Kern county.

2d. Certified copy of order in same estate, appointing special administrator, filed August 19th, 1870, marked "Defendant's Exhibit No. 2."

3d. Certified copy of petition in said estate for letters of administration by creditor, filed Aug. 1st, 1870, marked "Defendant's Exhibit No. 3."

4th. Certified copy of relinquishment of Ellis Griffith of right to administer, marked "Def'ts Exhibit No. 4," filed August 11, 1870, in same estate.

5th. Certified copy of resignation of special administrator, filed August 11th, 1870, marked "Def'ts Exhibit No. 5."

6th. Certified copy of report of special administrator, filed
243 Aug. 11th, 1870, marked "Def't's Exhibit No. 6."

7th. Certified copy of order discharging special administrator, filed Aug. 11th, 1870, marked "Def'ts' Exhibit No. 7."

8th. Certified copy of order appointing administrator, filed Aug. 11th, 1870, marked "Def'ts' Exhibit No. 8."

9th. Certified copy of letters of administration, filed Aug. 11th, 1870, marked "Def'ts' Exhibit No. 9."

10th. Certified copy of inventory and appraisement, with accompanying affidavit, filed September 5th, 1870, marked "Def'ts' Exhibit No. 10."

11th. Certified copy of petition to sell at private sale 23 head of cattle, filed Aug. 11th, 1870, marked "Def'ts' Exhibit No. 11."

12th. Certified copy of order appointing time for hearing application to sell personal property, filed Aug. 11th, 1870, marked "Def'ts Exhibit No. 12."

13th. Certified copy of order to sell personal property at private sale, filed Aug. 16th, 1870, marked "Def'ts' Exhibit No. 13."

14th. Certified copy of report of sale of personal property, filed September 5th, 1870, marked "Defts' Exhibit No. 14."

15th. Certified copy of order confirming sale of personal
244 property at private sale, filed Sept. 5th, 1870, marked "Def'ts' Exhibit No. 15."

16th. Certified copy of petition to sell personal property, filed Aug. 11th, 1870, maked "Defendants' Exhibit No. 16."

17th. Certified copy of order appointing time for hearing petition to sell personal property, filed Aug. 11th, 1870, marked "Def'ts' Exhibit No. 17."

18th. Certified copy of order of sale of personal property, filed Aug. 16th, 1870, marked "Def'ts' Exhibit No. 18."

19th. Certified copy of report of sale of personal property at private sale, filed September 6th, 1870, marked "Def'ts' Exhibit No. 19."

20th. Certified copy of order approving sale of personal property at private sale, filed Sept. 5th, 1870, marked "Def'ts' Exhibit No. 20."

21st. Certified copy of administrator's exhibit, made at third term, filed March 6th, 1871, marked Def'ts' Exhibit No. 21.

22d. Certified copy of administrator's annual account, filed Aug. 11th, 1871, marked Def'ts Exhibit No. 22.

23d. Certified copy of report accompanying annual account, filed Aug. 11th, 1871, marked "Def'ts' Exhibit No. 23."

24th. Certified copy of order appointing time of settle-
245 ment of annual account, filed Aug. 11th, 1871, marked "Def'ts' Exhibit No. 24."

25th. Certified copy of exceptions of Ellis Griffith to the annual account, filed Aug. 11th, 1871, marked "Defts' Exhibit No. 25."

26th. Certified copy of minute order of court continuing the hearing of the annual account, acceptance to the first Monday of November, 1871, record, page 191, marked "Def'ts' Exhibit No. 26."

27th. Certified copy of affidavit of B. Brundage, asking continuance, filed Nov'r 7th, 1871, marked "Def'ts' Exhibit No. 27."

28th. Certified copy of minute order continuing the hearing until March 5th, 1872, record, page 195, marked "Def'ts' Exhibit No. 28."

29th. Certified copy of order settling annual account from the minute record, page 197, bearing date March 5th, 1872, marked "Def'ts' Exhibit No. 29."

30th. Certified copy of administrator's final account, filed May 14th, 1872, marked "Def'ts' Exhibit No. 30."

31st. Certified copy of report accompanying final account, filed May 14th, 1872, marked "Def'ts' Exhibit No. 31."

32d. Certified copy of order fixing time of settlement of final account, filed May 14th, 1872, marked "Def'ts' Exhibit No. 32."

246 33d. Certified copy of decree settling final account, filed May 27th, 1872, marked "Def'ts' Exhibit No. 33."

34th. Certified copy of the petition of Ellis Griffith, for distribution with the exhibit thereunto attached, filed May 27th, 1872, marked "Def'ts' Exhibit No. 34."

247 B. BRUNDAGE, being duly sworn for the defense, says:

My name is B. Brundage; reside in Bakersfield, Kern county; have resided in the county since March 6th, 1866; age, 42 years; occupation, lawyer; practice in districts courts of this State. I am the B. Brundage that signed and filed petition for distribution mentioned in Def'ts' Exhibit No. 34. I had the original of the exhibit attached to the petition, and marked "Exhibit A." I think I have it yet among my papers. Ellis Griffith signed that document. I saw him sign it. He delivered it to me [when] it was drawn. It was signed in the presence of C. Austin. Witness looked at the receipt of Ellis Griffith in the estate of John G. Griffith, *of* deceased, and identified the signature as his own, signed as the attorney of Ellis Griffith. I was acting at the time under power of attordey, copy of which is included in Exhibit 34, and also as his attorney-at-law.

Cross-ex.:

When I gave the receipt first referred to I did not receive
248 any money. At the time I gave the receipt the administrator presented me a note signed by Ellis Griffith, witnessed by J.

V. Rosemire, for the sum of $500, and the amount named in that receipt was endorsed on that note as a payment by Ellis Griffith, and I took a receipt from Godey for the amount endorsed on the note.

B. BRUNDAGE.

249 35th. Certified copy of final decree of distribution, filed July 8th, 1872, & marked "Def'ts' Exhibit No. 35."

36th. Certified copy of the receipt of Ellis Griffith, signed by B. Brundage as attorney, referred to in testimony of B. Brundage, filed July 18th, 1872, & marked Def'ts' Exhibit No. 36.

37th. Certified copy of final discharge of administrator of said estate, filed November 12th, 1872, & marked "Def'ts' Exhibit No. 37."

It is agreed between counsel the complainant may make at the hearing any objection he desires to make to any of the foregoing exhibits of defendant, provided he makes no objection which, if made now, would enable defendant to cure the fault.

38th. Certified copy of the assessment of John Griffith for the year 1869–'70, from the assessment roll of Kern county, filed July 26, 1877, & marked "Def'ts' Ex. 38."

Objected to by complainant as incompetent, irrelevant, & immaterial. Counsel, however, admits that the John Griffith named in the said document is the same John Griffith named in this testimony.

250 39th. Certified copy of Ellis Griffith's declaration of intentions to become a citizen, marked "Def'ts' Exhibit No. 39."

40th. Certified copy of Ellis Griffith possessory-claim affidavit, marked "Def'ts' Exhibit No. 40."

41st. Certified copy of Robinson Mackey's possessory claim affidavit, dated January 27, 1870, marked "Def'ts' Exhibit No. 41."

251–2 *Examiner's Certificate.*

I, F. W. Craig, special examiner, duly appointed by the circuit court of the United States for the district of California, do hereby certify that on the several days named in the depositions hereto annexed I was attended at the county court-house, at Bakersfield, in the county of Kern, State of California, by the counsel and witnesses aforesaid. That the said witnesses were each severally duly sworn and examined, and the deposition of each witness was reduced to writing and read to the witness, and by him subscribed in my presence, and that Exhibits numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, and 41, hereto attached, were introduced in evidence during the time of taking said testimony.

Dated August 24th, 1877.

F. W. CRAIG,
Special Examiner.

(Endorsed:) Filed 14th Sept., 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep'y cl'k.

253 *Order App'g Special Examiner.*

United States Circuit Court, District of California.

ELLIS GRIFFITH *vs.* ALEXIS GODEY *et al.*

On reading and filing the stipulation of the parties hereto, it is ordered that A. M. Clark, (county clerk) of Fresno City, be, and he is hereby, appointed a special examiner in chancery of this court to take the testimony of witnesses in this suit residing at or in the neighborhood of said Fresno.

(Signed) LORENZO SAWYER,
Circuit Judge.

(Endorsed:) Filed 13th April, 1876. L. S. B. Sawyer, clerk.

UNITED STATES OF AMERICA.

Circuit Court of the United States, Ninth Judicial Circuit, District of California.

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit in and for the district of California, do hereby certify the annexed to be a copy of the original order of Hon. Lorenzo Sawyer, judge of said court, appointing A. M. Clark special examiner, &c., &c., now on file and remaining of record in my office; that I have compared the same with said original, and that the same is a correct transcript therefrom, and of the whole of said original.

254

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at San Francisco, this 22d day of April, A. D. 1876.

[SEAL.] L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE,
Deputy Clerk.

255 *Thomas Fleck.*

Circuit Court of the United States, District of California.

ELLIS GRIFFITH, Complainant,
vs.
ALEXIS GODEY *et al.*, Defendants.

Testimony taken on the part of the complainant, under the 67th rule of practice for the courts of equity of the United States, by A. M. Clark, special examiner in equity of said court at Fresno, in the county of Fresno, in the State of California.

Present: Edward Gray Stetson, Esq., counsel for complainant; Thomas H. Laine, Esq., counsel for defendant Godey; Francis Johnson, Esq., counsel for defendant Williams.

THOMAS FLECK, produced and sworn as a witness on the part of the complainant, deposes and says:

My name is Thomas Fleck; I live now in Fresno City;
256 I have no occupation now, have been following the sheep business; my age is 49 years. In the year 1870 I lived on San Emidio Creek, in Kern couty; I was in the sheep business there, raising sheep; I knew at that time Mr. Alexis Godey; I knew Mr. C. S. Williams, partner of Mr. Funk; I knew at that time Ellis Griffith. I knew John Griffith, Ellis's brother, in his lifetime; the Griffiths lived at Cein Equita, which was between 12 and 14 miles from where I lived; I heard that Godey was appointed administrator of the estate of Jack Griffith; I acted as one of the appraisers of Jack Griffith's estate; I was appointed appraiser through Mr. Godey, I being generally familiar with stock; myself and Mr. James Rosemyer were the appraisers; we made the appraisement.

The day was appointed and we went over to the Cien Equita to take account of the cattle and horses and any other property. Mr. Rosemyer and I went together. We counted the cattle in the corral first, small and large. We then counted the horses, & Mr. Rosemyer & myself appraised them at the time at what we thought right. The horses & cattle were in corrals, but in different corrals. We appraised no horses or cattle, except what were in the corral. The cattle were very poor indeed, those which we ap-
257 praised. The horses were likewise very poor and scrubby.

Ques. What was the reputation in the neighborhood of the Griffith stock previous to the appraisement?

Objected to as incompetent & hearsay, the objection made on the part of all the defendants.

Ans. The reputation of the stock was that of number one good cattle, and the horses had the name of being good stout horses. The condition of the stock was reputed to be good at the time—I mean the same summer, just previous to making the appraisement. I know the character of the stock previous to the appraisement—that is, just a few of the stock, 20 or 30 good milch cows—by personal observation. Those that I saw were in splendid condition, and good cattle—Durham cows. I had seen a few of the horses previous to the appraisement—about a month previous; they were in splendid condition—too fat to be used. The quality of the horses were half-breeds; they were good ordinary horses. Of my own knowledge I do not know whether there was any more stock than was shown to the appraisers. I am sure that none of the stock I saw previously, and stated as having been in good order and fat, were in the cor-al at the time the appraisement was made. This applies to the
258 horses also. None of the horses and cattle of which I have spoken as being in good condition were shown to the appraisers.

I was told by Godey that there were about 100 head milch cows down by San Luis Obispo which Griffith had let out on shares. Godey & Ellis & John Griffith all told me this. Godey told me that

the time for which the man had taken the cows had not expired, and he would not give them up. Godey never told me anything about the quality of the cows. I did not know these cows myself, but supposed them to be average milch cows; they were worth at that time 25 to 30 dollars per head.

We did not appraise the range or ranch that the Griffiths claimed. My memory is distinct as to the number Godey told me, being 100 head of cattle, or about that. There was nothing said at the time about appraising the range or ranch. Ellis Griffith was present at the time we made the appraisement. No person was present at the time the appraisement was made except the appraisers and Ellis. A Mexican vaquero drove up the stock.

Ques. Did you ever hear this Mexican or anybody at that time say anything about all the stock not having been driven up?

Objected to by defendants as incompetent, irrelevant, and immaterial, and as being hearsay.

259 Ans. The vaquero said he could not find all the stock; heard outsiders also say that all the stock were not there. I knew the range used by the Griffiths. It was splendid range. I had been over it several times. It was several miles in extent; when stock were poor in other places they were fat on that range. I went there in 1865, and to my own knowledge Griffiths had been in the habit of using this range since that time.

Ques. Was there any custom among stockmen in that region in 1870 of respecting the rights of the first occupant of the cattle range on public land?

Objected to by defendants, as irrelevant and immaterial, in that custom cannot make private property out of public lands.

Ans. Yes; there was such a custom, that the first occupant held the range, and the rest let him alone.

I was not at the auction of the Griffith stock in 1870. I heard from Godey & Williams beforehand that the auction was to come off. Saw no notice posted up. The fact that the auction was to take place was not generally known in that vicinity. I was in the habit of seeing Ellis Griffith from the time his brother died through the summer every day, more or less. He had no money
260 that I could see. He appeared to be poor. From my knowledge of his character, if he had had money I would have known it; if he had a $1,000 or so he would have told me. He had no decent clothes, and he told me he had no money to buy any with.

Defendant objects to the evidence as to what Ellis said.

Ellis Griffith was, at the time (1870), generally sober and industrious; he had no money to buy liquor. I saw him drink once in a while, but not to get out of the way.

Mr. Godey had great influence over the Mexicans around there, and Ellis thought Godey could do better than any one else with the property. Ellis told me that he intended to put the business

of the estate in Godey's hands. Ellis appeared to believe in Godey, and to trust him. Ellis thought everything Godey said was right, and appeared to look up to him as a father.

Godey thought Ellis appeared stupid and sluggish, and to have no sense at all. I have heard Godey call Ellis a foolish boy, going around, doing nothing. This was after the death of Ellis' brother. Previous to that he was industrious. Godey made him believe he would be worth several thousand dollars.

Ellis had his shoulder dislocated the day previous to the auction sale, by a fall from his horse. This was in August, 1870. I
261 saw Ellis the next day. His arm had not been set at that time. Ellis and I had a conversation about it.

Ques. What was the conversation?

Objected to by def'ts, as irrelevant & immaterial.

Ans. I asked him why he did not go and have his shoulder put in place; and he told me that he did not have the means to do so. I told him he ought to go to Godey & get the means, and that he told me Godey refused, and said he had nothing to do with his doctor's affairs. I suppose Griffith could have kept about 3,000 head of cattle or horses on their range.

Cross-examination:

I first became acquainted with Ellis Griffith in 1865. He lived in Cien Equita, Kern county, with his brother John. He lived there continuously from the time I first knew him until John's death. Ellis Griffith was at Los Angeles at the time Jack Griffith died; he was there temporarily. Jack had been dead from 3 weeks to a month when we went to appraise the stock. The cattle and horses were generally poor & in bad condition at that time in that vicinity; it was a bad year. To the best of my knowledge, now, there
262 were about 50 or 60 head of horses when the appraisement was made. I had not seen the horses of Griffith shortly before his death to enable me to know about how many he had. The horses we appraised were very poor indeed, & a good number of their tails shaved off. It is a common custom to shave the tails of mares in these droves. It was too short a time from the death of Griffith for the horses to have grown poor to the time of the appraisement. The horses spoken of by me as being fat, I saw about 6 months before Jack's death; do not remember the time, but it was in the fall of the year. I saw about 40 or 50 of such horses. I don't see why the horses should have grown poor in the 6 months. There was nothing for them to do, and they had plenty of food. It was a bad year, and feed short, generally.

I account for the horses being so poor on the grounds by supposing the best horses were picked out, and the poor ones driven up. The horses that were appraised looked as if they had been run to death. Jack took the best care of his stock, & allowed no one to handle them but himself. By running and lassoing horses, and throwing them down, abuses them very much, and would make them poor. I never knew any one to run or abuse

263 that stock. Ellis sold none of the horses after his brother's death and before the appraisement that I know of. I have heard Ellis say that the doctor got some of the horses. He got them in part payment for attending on Jack. Do not know how many, but what he got was before the appraisement. We appraised about 70 or 80 head of cattle, all of which were poor, and included calves. The fat cattle which I saw was about three months before Jack's death. On the day of the appraisement I saw some of his cattle down in the creek in splendid order; saw about 20 head of stock; saw them about a mile and a half below the house. Ellis was not with me then; only Rosemyer was with me; we were going home. We did not appraise them. We were ordered to appraise none but what were in the corral. We were told that the cattle were all in the corral. Those I saw on the outside were not mentioned, and I supposed from that they had not been sold. The venta is the brand put on the left shoulder. The vaquero told me that all the cattle were in the corral. He was not the vaquero who had been in the employ of Jack Griffith, but was in Godey's employ.

Ellis Griffith was present when the vaquero said all the cattle were in the corral. Ellis said he thought they were all there.

264 Ellis knew the cattle well, and he told me afterwards that they were not all there. I asked him why he did not say so at the time. He answered that Godey told him to say that the cattle were all there. This was about a fortnight afterwards.

There was some cattle sold by the direction of Ellis Griffith before the appraisement, but I don't know how many; they were all steers; beef cattle. Mr. Marmolejo told me they were steers, and that he was driving them to market; that was Marmolejo's business.

I know the auction sale was not generally known of, because Mr. Baker came over to Rosemyer's and inquired of Godey when the sale would take place, and he was told that the sale was over, when Mr. Baker & Godey laughed over the matter. I think Baker did not know the day the sale was to come off, but knew there was to be a sale. We generally knew the sale was coming off by talk among ourselves.

No one was present at the auction except Williams, the def't, Rosemyer, Alexis Godey, and the Frenchman who bought the stock. Def't Williams told me this. He told me Mr. Godey and the Frenchman stepped to one side and had a private conversation, and the sale was all over. Williams told me that the Frenchman bought the stock.

265 This conversation between me and Williams was about 3 days after the sale. The Frenchman put the cattle in charge of his herders and left them on the place, and took possession of the place and all the improvements—the ranch, stock, and all sold to the Frenchman the same day. Williams told me this. The name of the Frenchman who bought the stock is Palo Alto, or that is the name by which he is known.

Redirect:

I do not remember the month that Jack Griffith died; it was some

time in the summer. I may be mistaken in saying that only 3 or 4 weeks intervened between Jack's death and the date of the appraisement; it has been a long time, & I have lost my books. I have no doubt the dates in the record of the probate court are correct. The inventory & appraisement in probate court is shown witness. I have no reason to suppose the record is incorrect, and I must have been mistaken in the number of head of cattle & horses I said I appraised. It was a long time ago, & I had dismissed the matter from my mind, supposing the whole thing to be ended. I lost my books.

My books contained memoranda of these matters. This
266 makes no difference in my statement that all the cattle & horses had not been driven up.

In that year the feed was better on Griffith range than in other places in that region. Ellis was in charge of the cattle for a few days, and then turned them all over to Godey, who put a vaquero of his own in charge. Ellis did not take charge of them again after that.

I had seen the vaquero of Godey for 2 or 3 years; think he was a good, attentive man. He had been some years in Godey's employ. Marmalejo took away the cattle two or three days after he bought them.

The man Baker spoken of is the partner of Beale, of the Tejon ranch. The Tejon ranch house is about 49 miles from the Cienguita. Baker had this interview with Godey at Hudson & Rosemyers' store. This interview was some time about one month after the auction sale. Mr. Baker said to Godey, I suppose you have got it all in your hands? Godey laughed but made no reply, except to say, I thought you knew when the sale was to come off. I have no other reason to suppose the sale was not generally known.

267 I saw no notice of the sale posted at Hudson & Rosemeyer's store, but some time after the sale I saw a notice on a tree on the public road going to Bakersfield, stating the time of the sale; that was the main road over which the people generally travelled.

The time I had the conversation with Williams was shortly after the sale.

THOMAS FLECK.

Subscribed and sworn to before me, this 25th day of April, A. D. 1876.

A. M. CLARK,
Special Examiner.

268 *Certificate of Examiner A. M. Clark.*

STATE OF CALIFORNIA, } ss:
County of Fresno, }

I, A. M. Clark, of Fresno, county of Fresno, special examiner, duly appointed by the said circuit court, (a copy of whose order, dated on the 13th day of April, 1876, is hereto attached,) to take the testimony of witnesses residing in the neighborhood of Fresno aforesaid, do hereby certify that on the day mentioned in the foregoing depo-

sition I was attended at Fresno aforesaid by the counsel and witness aforesaid. That the said witness was duly sworn and examined, and the deposition was reduced to writing, and read to the witness, and by him subscribed in my presence.

A. M. CLARK,
Special Examiner.

Dated at Fresno aforesaid, this 29th April, 1876.

(Endorsed:) Opened and refiled pursuant to stipulation of counsel, this 20th day of September, 1878. L. S. B. Sawyer, cl'k, by J. F. O'Beirne, d'p'y.

269 *A. A. Bermudez.*

Circuit Court of the United States for the District of California.

ELLIS GRIFFITH
vs.
ALEXIS GODEY *et al.* } No. 1201.

Be it remembered that on this 28th day of February, A. D. 1878, at my office, room 1, in the United States court building, in the city of San Francisco, district of California, personally appeared before me, Lorenzo S. B. Sawyer, an examiner in equity, duly appointed by the circuit court of the United States for the ninth circuit and district of California, A. A. Bermudez, a witness on behalf of the defendants in the above-entitled suit.

Thomas H. Laine, Esq., appeared as counsel for the defendant Godey, Francis Johnson for def't Williams, and Edward Gray Stetson as counsel for the complainant.

And the said witness having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as follows, that is to say.:

Examination-in-chief by Mr. LAINE:

270 Question. What is your name, age, occupation, and place of residence?

Answer. My name is Alphonso A. Bermudez; my age is 43 years and upwards; my occupation is ranchero; and my place of residence is Welden, Kern county, California.

On the 15th day of July, 1870, I was deputy county clerk of Kern county, in this State. The county seat of that county was then Havilah. Havilah was considered about 75 miles from the Cieneguita. I knew Ellis Griffith at that time.

(Witness looks at defendant's Exhibit No. 40, and says:)

Ellis Griffith (I think it was he) came to the county clerk's office, at Havilah, at that time, and stated to me that he wished to file on or take up a piece of land near the Cieneguita Gulch. I asked him if he were a citizen of the United States, and he answered that he was not. I then told him he would have to declare his intention to be-

come a citizen before he could pre-empt the land. I then took his declaration of intention, and made the proper papers for the pre-emption. I read the papers to him after they were written. I had to do that to swear him. Griffith gave me the description for the pre-emption statement. I asked him if there was any water
271 course on the land. He told me that there was. I then made a plat so as to cover most of the water. He himself gave me the point of beginning. We then ran the lines in accordance with the pre-emption. I knew it was Ellis Griffith, because some one introduced him to me as Ellis Griffith, and he said himself it was his name. It was the same man who came there in the probate proceedings about Jack Griffith's estate. These papers were drawn in the clerk's office. He appeared sober enough to me. I saw nothing out of the way in the man. He did his business rationally. I do not recollect that any body was with him.

I know Alexis Godey, & knew him at that time; Godey was not then with Griffith in my office, that I recollect; I think I should recollect it had he been there.

Cross examination by Mr. STETSON:

To the best of my recollection the pre-emption affidavit and the declaration of intention were made the same day; the declaration was made first; I supposed the declaration of intention made Griffith a citizen of the United States, so far as taking up land is concerned. I wrote out the declaration myself, & read it to him, and explained it to him; I gave him to understand that he was a citizen
272 sufficiently to make the affidavit; I saw Alexis Godey that day in Havilah. Had some general conversation with him, but to the best of my belief, nothing relating to the two instruments I have spoken of; Ellis signed the papers at the time by his mark, touching the tip of the pen as I wrote.

A. A. BERMUDEZ,

Subscribed and sworn to before me, this 28 day of February, A. D. 1878.

——— ———,
Examiner.

UNITED STATES OF AMERICA, }
District of California, } ss:

On this 28 day of February, A. D. 1878, before me personally appeared the counsel and witness aforesaid; said witness was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; his deposition reduced to writing in my presence, and, after the same had been carefully read over to said witness, he subscribed his name thereto.

Attest &c.: L. S. B. SAWYER,
Examiner.

(Endorsed:) Opened and refiled Sept. 20, 1878. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d'p'y cl'k.

Ellis Griffith.

273 Circuit Court of the United States for the District of California.

ELLIS GRIFFITH
vs.
ALEXIS GODEY *et al.* } No. 1201.

Be it remembered that on this 9th day of June, A. D. 1876, at my office, room 1, in the United States court building, in the city of San Francisco, district of California, personally appeared before me, Jos. F. O'Beirne, an examiner in chancery, duly appointed by the circuit court of the United States for the ninth circuit and district of California, ELLIS GRIFFITH, a witness on behalf of himself in the above-entitled suit.

Edward Gray Stetson, Esq., appeared as solicitor for the complainant, and Francis Johnson, Esq., as solicitor for def't Williams, and T. E. Laine, Esq., for def't Alexis Godey.

And the said witness, having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as follows, that is to say:

Examination-in-chief by EDWARD GRAY STETSON:

Question. What is your name, age, occupation, and place of residence.

274 Answer. Ellis Griffith; age, about 45 years; I am ranching; residence, Alameda county. I am the complainant in this cause.

Ques. Ellis, do you remember the appraisement they made upon your place in Kern county, not long after your brother's death?

Ans. Yes, sir.

Ques. Do you remember who was there?

Ans. Thomas Fleck.

Ques. Who else?

Ans. Jim Rosemeyer. I was there and nobody else but raqueras. I am not sure whether Alexis Godey was there or not.

Ques. When were the cattle driven up?

Ans. In the morning of that day.

Ques. What time did they begin?

Ans. About 7 o'clock.

Ques. How many people were there to drive them up?

Ans. I could not say for certain how many there was there.

Ques. What time did Mr. Fleck and Mr. Rosemeyer get there?

Ans. They got there, as near as I can make out, about 9 or 10 o'clock.

Ques. What time did they get through the appraisement?

Ans. They got through about 3 or 4 o'clock, as near as I can understand.

Ques. State what portion of the cattle were driven up.

275 Ans. There weren't one-half of them I suppose, sir, drove up.

Ques. State what portion of the horses were driven up.

Ans. It was just the same way with the horses as with the cattle.

Ques. How long would it take to drive up all the stock?

Ans. I could not tell, I am sure, because some of the cattle were scattered on the ranches around there, and they had to go from one to another to get them all.

Ques. Well, I mean whether it would took some few hours, days, a week, or what time—some general idea?

Ans. Well it may take between all — a month before they get through.

Ques. What was the quality of the stock that was driven up?

Ans. They were pretty good.

Ques. Whether or not the best cattle and horses were driven up?

Ans. No, sir.

Ques. Did you speak to Mr. Godey about driving them up?

Ans. Well, that I could not tell. I could not say whether I said that to him or not.

Ques. Did you and he have any talk about driving up the stock?

276 Ans. Yes; they said they were going to drive them up.

Ques. Anything more?

Ans. He told me that he was going to appraise them. He told me about the taxes. He said he didn't want to get them all up on account of the taxes—on account of not having so much taxes to pay on them.

Ques. Did you say anything to the appraisers in regard to the number of stock driven up?

Ans. The—I did not say anything.

Ques. Why not.

Ans. Well, they—Godey told me to tell nothing about it on account of the taxes.

Ques. Did you ever count the cattle on the ranch?

Ans. Well, I was away some time from the ranch.

Ques. Did you ever count the cattle on the ranch at any time near Jack's death?

Ans. Yes, sir; before he died.

Ques. How many did you count?

Ans. Four hundred head of cattle and calves together.

Ques. About what portion of the 400 were calves?

Ans. I suppose about one-third of them calves.

Ques. Whether or not there were any other cattle which you did not count?

277 Yes, sir; close on to a hundred head more; my brother himself told me that.

Ques. Did you and Jack count them at the same time?

Ans. Yes, sir; Jack and I counted them.

Ques. How many did he make?

Ans. He made out 400 head of big and little cattle. Jack counted 400 head, and told me there were close on to a hundred head more on the ranches around.

Ques. Did you count the horses on the ranch at that time?

Ans. No, sir.

Ques. How did the number of horses compare with the cattle should you think; were there more or less?

Ans. I was absent at that time at Los Angeles until about a month before Jack's death. I was away in Los Angeles three years previous to Jack's death, and then I came back to him.

Ques. Do you remember signing a paper in the presence of Julius Chester and Godey a few months after Jack's death?

Ans. Yes, sir; I recollect that.

Ques. Did you ever sign more than one paper before Julius Chester in the presence of Godey?

Ans. No, sir.

Ques. How did you happen to sign that?

Ans. Mr. Godey asked me to sign it, and I signed it without knowing what was in it or anything at all.

278 Ques. How did Godey stand with you then?

Ans. Well, we were pretty good friends.

Ques. What kind of an opinion had you then of Godey?

Ans. Well, I had a mighty good opinion of Mr. Godey at that time; that he was a gentleman.

Ques. How much did you trust in him then?

Ans. Well, I put all the trust *all the trust* that I could in him at that time.

Ques. To whom did you then go for advice when you wanted it?

Ans. I went to Mr. Godey.

Ques. Do you remember the time when the stock was sold at auction to Mr. Williams?

Ans. I was sick then; all that I know I was sick then; I got my arm broken.

Ques. Did you get your arm broken going to the auction?

Ans. No, sir.

Ques. How was the feed at about the time of the auction sale to Williams?

Ans. It was pretty good.

Ques. Had you any reason to suppose the cattle would suffer?

A. Well, I don't suppose they would suffer that year more than any other year, or horses either.

279 Ques. How much money did you ever receive from Mr. Godey?

Ans. I only got $100 from Mr. Godey; that's all I got from [him]; I got this $100 at different times.

Cross-examination by THOS. H. LAINE, Esq., by consent:

Ques. How do you know that only one-half of the cattle were driven up to the appraisement?

Ans. Mr. Fleck told me they were not all the cattle driven up.

Ques. Where was you at the time the stock was driven up?

Ans. I was up at the house.

Ques. How far was the house from the place where the stock was corralled?

Ans. Right close to the house.

Ques. How many days had you been at the house before the stock was driven up?

Ans. That I can't tell, I am sure.

Ques. What were you doing there?

Ans. I used to live there sometimes; I came there from Los Angeles.

Ques. What was your business?

Ans. I used to look after the cattle there.

Ques. Who was it drove up the stock?

Ans. The vaqueros; I can't tell their names.

280 Ques. How many of them were there?

Ans. That I could not tell for certain.

Ques. Was there more than one?

Ans. Yes; more than one.

Ques. How many days were they engaged in getting up the stock?

Ans. Only one; they got through in one day.

Ques. Did you go out with them in getting up the stock?

Ans. No, sir; I did not go out with them.

Ques. Had not the stock been gathered up under your directions after your brother's death and before this appraisement?

Ans. No, sir.

Ques. How long was it after your brother's death before you came to the ranch?

Ans. I could not tell that for certain; it was about a day or two after he died.

Ques. What did you do in regard to the stock after you came up; did you take no charge of it?

Ans. Well, there was a man came up from another county & took charge of everything when I got there.

Ques. What did you do?

Ans. I told him at that time I owned the cattle and did not want any one there.

281 Ques. Did not you pay that man and discharge him?

Ans. No, sir; I did not pay him nothing.

Ques. What became of that man?

(Objection as not cross-examination.)

Ans. He went home; I never seen him afterwards.

Ques. Did you take any means of finding out how much stock was there then?

Ans. I did not.

Ques. Then you do not know how much stock was there at that time?

Ans. I don't know, only what I counted with my brother.

Ques. When was it you counted with your brother?

Ans. It may be a month, as near as I can make out, before he died.

Ques. Who was present when you made that count?

Ans. There was only me and him.

Ques. Were there no vaqueros?

Ans. No, sir.

Ques. How came you to make it?

Ans. Because I was not going to stay there; I was going to Los Angeles.

Ques. Was the stock driven up when you made the count rodeo?

Ans. No; we just went riding around.

282 Ques. You say that only one-half of the horses were driven up to the appraisement; how do you know that?

Ans. That's what Tom Fleck told me.

Ques. The stock appraised was very poor, was it not?

Ans. No.

Ques. Did you see them?

Ans. I saw the cattle in the corral.

Ques. Did you tell Tom Fleck at that time the stock was all there?

Ans. No, sir; I did not tell him anything.

Ques. Had you lived on the ranch with your brother?

Ans. Yes, sir; I was living with him on the ranch since 1853, only about 3 years; the 3 years before my brother died.

Ques. When you counted this 400 head, you found them scattered all over the range, did you?

Ans. Scattered all over everywhere.

Ques. How long were you making the count?

Ans. We went round; it took us till night; early in the morning we started.

Ques. How long were you at the ranch when you made this count?

Ans. I was maybe a week or more.

Ques. Do you know how to read and write?

283 Ans. I can write my own name, that's all; I cannot read writing.

Ques. Does Godey know how to read and write?

Ans. Well, I could not tell for certain; I don't think Godey can do more than I can, if he can do as much.

Ques. Who wrote the paper you signed in presence of Mr. Chester?

Ans. Mr. Chester; I did not see him write it; he only brought it to me on the table.

Ques. Where was that done, and who was present?

Ans. As near as I can recollect it was at Mr. Chester's, and only in the presence of Mr. Chester and Mr. Godey.

Ques. How came you at Chester's house?

Ans. Well, I used to ride around once in a while.

Ques. Did you go there with Godey?

Ans. Can't tell whether I went there with Godey or by myself.

Ques. Who first mentioned the paper?

Ans. Mr. Chester brought it out to me, and Mr. Chester and Mr. Godey both wanted me to sign it, and I wrote my name under it without knowing what was in it.

284 Ques. What did they want you to sign it for?

Ans. Well, they did not tell me what for, only I went and signed it, that's all.

Ques. Was it read over by anybody?

Ans. No, sir; read over by nobody.

Ques. And you did not learn at that time what the paper was for?

Ans. No, sir.

Ques. Do you know what it was now?

Ans. I do not know what it is to this day.

Ques. Are you certain you never signed any other paper which you gave to Godey?

Ans. I can't recollect no other paper which I gave Mr. Chester.

Ques. Did Chester sign this paper as a witness?

Ans. I don't recollect seeing him sign his name to it.

Ques. Who took the paper after you signed it?

Ans. I don't know whether Mr. Chester or Godey took it; I swore to no paper.

Redirect:

Ques. Where was Chester's house at which you signed the papers?

285–6 Ans. It was at the Tacuya, near Fort Tejon, about 25 miles from Bakersfied.

Complainant here offers in evidence Complainant's Exhibit No. 4, being reports of adm'r of account of sales of personal property, filed September 5, 1870.

Complainant here closes his testimony-in-chief, with leave to introduce at any time before the close of testimony in the case evidence as to the custom in regard to sale of a brand covering all the cattle marked with it.

his
ELLIS x GRIFFITH.
mark.

Subscribed and sworn to before me, this 9th day of June, A. D. 1876

JOS. F. O'BEIRNE, *Examiner, &c.*

(Endorsed:) Opened and refiled, pursuant to stipulation of counsel, this 20th day of Sept., 1878. L. S. B. Sawyer, cl'k, by J. F. O'Beirne, d'p'y.

287 *Special Examiner's Report.*

Circuit Court of the United States, District of California.

ELLIS GRIFFITH *vs.* ALEXIS GODEY *et al.*

Testimony taken on the part of the complainant under the 67th rule of practice for the courts of equity of the United States by F. W. Craig, special examiner, duly appointed by the said court to take the depositions of certain witnesses in said cause.

WEDNESDAY, *Nov.* 10*th*, 1875.

Present: Edward G. Stetson, Esq., counsel for complainant; Thomas H. Laine, Esq., counsel for defendants Godey and Williams.

The persons hereinafter named were produced and sworn as witnesses on the part of the complainant, and deposed as hereinafter set forth.

288 Circuit Court of the United States, District of California.

ELLIS GRIFFITH *vs.* ALEXIS GODEY *et al.* } In Equity.

On reading and filing the stipulation of the parties hereto, it is ordered that F. W. Craig, of Bakersfield, Kern county, State of California, be, and he is hereby, appointed special examiner herein to take the testimony of witnesses who reside in the neighborhood on behalf of all the parties to this cause.

Dated Sept. 7th, 1875.

(Signed) LORENZO SAWYER,
Circuit Judge.

(Endorsed:) Filed 7th Sept., 1875. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

United States of America, Circuit Court of the United States, Ninth Judicial Circuit, District of California.

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the
289 United States of the ninth judicial circuit in and for the district of California, do hereby certify the annexed to be a copy of the original order appointing special examiner now on file and remaining of record in my office; that I have compared the same with said original, and that the same is a correct transcript therefrom, and of the whole of said original.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at San Francisco, this 8th day of November, A. D. 1875.

[SEAL.] L. S. B. SAWYER, *Clerk.*

290 *Testimony of Julius Chester.*

In the Circuit Court of the United States in and for the State of California.

ELLIS GRIFFITH *vs.* ALEXIS GODEY *et al.*

WEDNESDAY, *November* 10*th.*

JULIUS CHESTER, being duly sworn, testified as follows:

My name is Julius Chester; residence, Bakersfield; age, 44; occupation, farmer. I think I was justice of the peace in 1870; am not positive. I remember taking an acknowledgment of a deed in ——, in which Ellis Griffith was grantor and A. Godey was grantee;

never acknowledged any other deed. (Admitted that co'pl't gave due notice to A. Godey to produce the deed, but declined to do it, because it is not in his possession or control; admitted September 17, 1870, and recorded Sep. 28, 1870, vol. 2 of deeds, p. 116. It is agreed that a certified copy of the deed may be put in, same as it was the original.) I remember being at Hudson's station,
291 and being called to go and acknowledge a deed by Mr. Godey; think Mr. Godey and Mr. Griffith were together. I think I was asked to write out the deed. The description was given by Mr. Godey, and I wrote it out. I think I commenced to read to Mr. Griffith, and I found he could not write his name or read the deed, I commenced to read the deed, and Griffith told me it was all right; don't remember whether I read the whole of the deed or not. I did not think he was sober at the time, and I think I read the deed to him. Mr. Godey was present at the time. I do not know whether he was in a condition to do business or not. He acted more queer than drunk. I did not see him drink, but he evidently had been drinking. He was under the influence of liquor at the time. I think I was more than ordinarily careful to read the deed to him, so that he could understand it, as he could neither read nor write, and I had my fears at the time he could not comprehend it. I saw some money paid to him by Mr. Godey; do not remember how much. He drank very hard at that time; was always under the influence of liquor when I saw him. I think Mr. Griffith had confidence in Mr. Godey, and depended on him a great deal in
292 business matters. I don't know whether Mr. Godey had any influence over him or not.

Ques. Did you ever hear Mr. Godey speak in regard to Mr. Griffith's character as to intelligence?

Ans. I have heard him call him a fool, but I think that is no more than anybody else said against him.

Cross-examination:

I do not remember who was present when I wrote the deed. I think it was election day. Mr. Hudson came in the room, and a number of people were about. Mr. Godey first asked me to write the deed. He requested me if I could not write the deed; there were were no deeds there, I think. Mr. Griffith, I think, was present, and heard the request. I do not remember anything about the am't of consideration. Mr. Godey said Mr. Griffith owed him something; that he had paid a bill for him at Hudson. I cannot say whether Mr. Godey gave me a written or verbal description of the property. I had no doubt of Mr. Griffith's understanding of what he was doing. I think I read to Mr. Griffith at the time; I commenced to read, and he stopped me, but I read it over to him. Mr. Godey or no one else took any measure to induce Mr. Griffith
293 to sign the deed. Mr. Griffith, I think, took the money off of the table. I don't know how long I had known Mr. Griffith before signing the deed; probably not more than several weeks. I think he spent most of his time at Hudson's station, where the deed was drawn. I happened at the station at the time the deed

was signed; was not sent for, that I remember. I remained after the execution of the deed at Hudson's an hour or two. Nothing was said by the parties after the execution of the deed about it.

Redirect examination:

I was justice of the peace at the time the deed was executed.

JULIUS CHESTER.

Subscribed and sworn to before me, this 10th day of November, A. D. 1875.

[SEAL.] F. W. CRAIG, *Co. Clerk.*

It is agreed that the certified copy of deed referred to in Chester's testimony shall be marked Complainants' Exhibit "No. 1." Complainants now offer certified copy of paper, entitled "Relinquishment of Rights, &c," dated August 9th, 1870, and marked Complainants' Exhibit "No. 2." Admitted that the body of the original is
294 in Mr. Freeman's writing, who was Mr. Godey's attorney in the estate of J. J. Griffith. Def'd'ts' counsel object, on the ground that [it] is immaterial and irrelevant to any issue in the case. Complainant offers certified copy of the deed from Alexis Godey to L. Peres and Pedro Altube, dated November 7th, 1870, and recorded in recorder's office of Kern county, in book 2 of deeds, page 126, marked "Exhibit 3."

Objected to by def'd'ts' counsel, as immaterial and irrelevant. Mr. Williams, being present, requested that Mr. F. H. Laine appear for him in this examination.

Examination adjourned till Thursday, November 11th, A. D. 1875, at 2 o'clock p. m.

John Funk.

THURSDAY, *November 11th*, 1875.

Examination resumed at 2 o'clock p. m.

JOHN FUNK, being duly sworn for complainant, testified as follows:

I reside in Kern county, at San Emidio ranch; stock raiser by occupation; 40 years old; have lived at San Emidio 7 years last August; have known the complainant, Ellis Griffith, I think about 5 years; I knew his brother, Jack Griffith; I knew Mr. Godey;
295 I know the place called "Ciniguite," where Griffith lived; I do not know how long he lived on it; he lived on the "Cieniguita;" had stock on it; don't know how much stock he had at the time of his death; his stock ran over a good portion of the country; that county was public land; my ranch adjoined his range on the east, with rough hills on south; the hills were used by everybody for range; on the west was public plain open to everybody's stock; on the north was open plain; there was water on the "Cieneguita;" two or three springs with water all the year round; there was water about half a mile from the Griffith place; a man named Mackey used this water after Griffith's death; Griffith's range was considered

a very good one; the range might have kept a thousand head; the water and range made the Griffith place valuable; there was water about 2 miles from Griffith's place, besides the place where Mackey was, that was the nearest water; water is tolerable plenty in that region.

Ques. Was there any custom among stockmen to recognize the rights of one another to ranges they have been in the habit of using on public lands?

296 Objected to, as no custom or usage among stockmen can affect the title or right of possession of public lands.

Ans. No, sir; I am familiar with the value of cattle ranges; it is my business.

Ques. What would you consider the value of that Griffith range, & the stock on it, in the year 1870?

Objected to, unless it be shown that Griffith owned by some sort of title a range with some defined boundaries.

Ans. I do not recollect anything about it; it is 5 years ago; the stock was a fair class of American cattle, worth at that time from $15.00 to $18.00 in coin per head. The horses were a fair lot of stock horses, worth from $10.00 to $12.00 [in] coin per head. I remember purchasing from Mr. Godey 3 head of the Griffith cattle; my partner, Mr. Singletary, paid Mr. Godey for them; I paid $25.00 per head for them. I remember Mr. Godey sold Mr. Marmalego about 40 head of cattle; do not remember the exact number; they were fair cattle; I suppose they were worth about $25.00 per head. Mr. Marmalejo sold those cattle to Mr. Miller. The cattle sold to Marmalejo were better than the rest of the cattle. I did not see the

297 money paid for the cattle Marmalejo bought. I heard that Mr. Godey sold the balance of the stock at auction. I was not at home at the time; I returned home the last of September; left home in June. I never heard Mr. Godey speak of Ellis Griffith as a fool that I recollect of. Godey and Griffith appeared to be on good terms in 1870. I don't know that Godey had any influence over Griffith. Never saw them together but 2 or 3 times. I went into partnership with C. L. Williams in 1868. I was in partnership with Mr. Williams in some property, and with Mr. Singletary in other. The season in 1870 was a rather dry one. I think it was the dryest season we have had since I have been down there 7 years. There were two seasons in succession which were dry. I went to San Emidio in 1868. The next year was a good one. The next was dry. That was 1869–70. The year following was dry. The feed was shortest in the summer of 1870. The feed was not short enough to cause the death of cattle in 1870. Mr. Williams bought some of the Griffith cattle at auction. He left them on the same range. He sold them in the fall of 1870. I don't know that any of

298 them starved. I don't remember any of them dying. One vaquero was enough to look after the cattle, excepting when they were gathering them up. The wages of a vaquero would be $30.00 per month and board. There would be no other expense to

keep them excepting to gather them up. The cattle generally were in a worse condition in November, 1870, than in August of that year. The distance from the "Cieneguita" to Havilah is about 90 miles. From Cieneguita to the mouth of the Cañon store or Hudson & Rosenger's store, it is 32 miles. The population is rather sparse. There were no railroads in this county in 1870. I lived about a mile and a quarter from Mr. Godey in 1870. Mr. Williams lived at the same place where I did. Mr. Mackey had a squatter title to the claim I bought from him. Griffith's was the same; both on public land. I suppose the reason the cattle were not removed to San Emidio was that they would go right back to their range. Mr. Godey claimed to own the Griffith range. He did not charge any rent that I know of. The stock that Mr. Williams bought was afterwards sold to Peres and Altuba. I think in November.

299 Ques. How much did Williams get from Peres & Altuba for the stock?

Objected to as no proof of value

Ans. Everything was sold in a lump, and no apportionment being made, except that Mr. Godey was to have $4,000.00 for the sulphur springs of 80 acres; everything sold for $17,000.00. Mr. Williams first told me that Peres & Altube wanted to buy the Griffith property; it was when I came home from Sacramento the last of September. I went once to purchase the Griffith property in 1869, range, stock, and all. I did not go to look at the stock; I never had seen the stock, and did not form any estimate of the value.

The defendants' counsel here desired to cross-examine the witness by question & answer, for the reason that the narrative form as applied to the subject-matter renders the testimony indefinite and uncertain.

The complainant's counsel states that he has no objections, save as he regards such method improper under the rule, and claims that he ought not to be charged with the extra costs caused by such mode of examination.

Examiner decides that the cross-examination shall be conducted by question and answer.

300 Ques. In your direct examination you spoke about the "Cienequita;" what was it?

Ans. It is a small swamp in English; probably not over a hundred feet square.

Ques. It was then a mere watering-place for stock that might be ranging in the neighborhood?

Ans. It was.

Ques. Was it not on the unsurveyed public land of the United States?

Ans. It was.

Ques. Had Jack Griffith any enclosure or the improvement at or near the "Cienequita?"

Ans. He had a smal house & corral; nothing else.

Ques. Did he have a claim or title to it?

Ans. He had or claimed a squatter title.

Ques. Did you ever know of his marking out or designating any boundary?

Ans. I did not.

Ques. Did he ever file any claim thereon under either the State or Federal law?

Ans. I never knew of any.

Ques. Did not his stock roam*ed* wherever they pleased, without being confined to this particular locality?

Ans. They did.

Ques. You mean, then, by his claiming a squatter title, that he was merely living there, pasturing his stock?

Ans. I do.

Ques. Was it not a matter of common repute that he was an alien?

Ans. I had heard so.

301 Ques. Did you ever know him to claim or exercise any of the rights of a citizen?

Ans. I did not.

Ques. When you speak of the "Cienequita" as sold by Mr. Godey, you refer to the possessory claim placed thereon by Ellis Griffith, do you not?

Ans. I do.

Ques. That included 160 acres, did it not?

Ans. I believe it did.

Ques. Was not the Mackey claim of a similar character?

Ans. It was.

Ques. Taking into consideration the season & the range upon which the cattle & horses *on* Mr. Griffith were accustomed to run in 1870, and that they belonged to the estate of a deceased person undergoing settlement in the probate court of the county, would a prudent man, having the management of such an estate, and looking to its best interests, have offered that stock for sale in 1870?

Objected to, on the ground that it assumes the property belonged to the estate of a deceased person, and on the ground that it asks for the expression of an opinion on a subject as to which it does not appear the witness is an expert.

Question is withdrawn.

Ques. Were you acquainted with the range on which this stock was accustomed to run in 1870?

302 Ans. I was.

Ques. Was it apparent in August, 1870, that the feed on that range would be short for stock in the winter?

Ans. Yes, sir; it was.

Ques. Is it not true that considerable stock perished on that range that winter?

Ans. I think some perished.

Ques. The 3 head of cattle you spoke of as being sold by Godey, were they not among the best of the stock?

Ans. Yes, sir; they were.

Ques. Do you know by whose order they came into your possession?

Ans. Jack Griffith told me to take the cattle before his death; they ran with my cattle.

Ques. Do you know whether or not Ellis Griffith knew you had those cattle?

Ans. Yes; I told Ellis Griffith I had them.

Ques. Did he make any objection to the sale of them?

Ans. No, sir; he did not.

Ques. Was Ellis Griffith present at the time of the sale of the cattle to Marmalejo?

Ans. I don't know that he was present when the cattle were sold, but he was present that evening and saw the cattle in the corral.

Ques. Did he know that evening the cattle had been sold?

Ans. He did.

Ques. Did he make any objection to the sale?

Ans. I did not hear any.

303 Ques. The forty head sold to Marmalego, were they not select cattle?

Ans. Yes, sir; they were select cattle.

Ques. Were those 43 head sold at their full value?

Ans. I do not know what they, the 40 head, brought; the three head brought their full value.

Ques. Have you any certain knowledge of the amount or character of the stock left by Jack Griffith?

Ans. I have no certain knowledge as to the amount; the character I know more about.

Ques. Well, among these cattle were calves & small cattle, were they not?

Ans. Yes, sir; they were stock cattle—cows, calves, &c.

Redirect examination:

The cattle of Mr. Griffith were driven in twice a year. The custom is to bring the cattle home in the spring, and they generally stay about till rain comes, when they scatter; they generally stay more or less on the range they were born on. I do not know personally whether Jack Griffith was an alien or not.

Ques. Was the Cienequita commonly considered to be the property of Jack Griffith and respected as such?

Objected to, on the ground that it is no way to prove ownership of property.

Ans. Everybody recognized it as his camp or place, and

304 spoke of it as the Griffith place. When I spoke of it being apparent that the feed would be short in the winter of 1870 I meant that the dry feed would be short; the new feed starts generally about December, and gets so that the cattle can do pretty well on it by the middle of January. I do not know personally that any of the Griffith stock died in the winter of 1870–'71. Cattle died all over the range and region, but do not remember seeing any dead of

that brand. Cattle always die more or less every season. I do not mean that a great many died that winter of 1870–'71.

Recross-examination:

Ques. Have you not heard Jack Griffith say that he was a Welshman by birth?

Ans. I think I heard him say so.

JOHN FUNK.

Subscribed and sworn to before me, this 11th day of November, A. D. 1875.

[SEAL.] F. W. CRAIG, *Clerk.*

Examination adjourned, subject to be resumed by notice from complainant.

305–6 *Examiner Craig's Certificate.*

I, F. W. Craig, special examiner duly appointed by the circuit court of the United States for the district of California, a copy of whose order, made on the 7th day of September, 1875, is hereto annexed to take the testimony of certain witnesses herein, do hereby certify that on the several days named in the depositions hereto annexed I was attended at the town of Bakersfield, in Kern county, in the State of California, by the counsel and witnesses aforesaid; that the said witnesses were each duly sworn and examined, and the depositions were reduced to writing, and each to the witness making it, and by him duly subscribed in my presence, and in the presence of the aforesaid counsel.

And that exhibits, marked respectively Exhibits "Nos. 1," "2," and "3" were introduced in evidence in said cause during the taking of said depositions.

Dated at Bakersfield aforesaid, June 21st, 1876.

F. W. CRAIG,
Special Examiner.

(Endorsed:) Opened and refiled pursuant to stipulation of counsel, this 20 day of September, 1878. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d'p'y cl'k.

307 COMPL'TS EX. 1.

This indenture, made the 17th *seventeenth* day of September, A. D. 1870, between Ellis Griffith, of Kern county, State of California, party of the first part, and Alexis Godey, of the same place and State, the party of the second part, witnesseth: That the party of the first part, for and in consideration of the sum of five hundred twenty-seven $\frac{00}{100}$ [dollars], lawful money of the United States, receipt whereof is hereby acknowledged, has granted, bargained, and sold, and by these presents does grant, bargain and sell, all his rights, title, and interest in and to that certain piece or parcel of land situated in Kern county, State of California, known as the

Senegita, a possessory claim for which was duly filed in the recorder's office of said county by the party of the first part, on or about the 12th of August last, reference to which is hereby made, and the description therein contained is made part of this instrument.

To have and to hold the said described premises, with the appurtenances, and all the rents, issues, and profits thereof, his heirs and assigns forever.

In witness whereof, I have set my hand and seal the day
308 and year first above mentioned.

his
ELLIS x GRIFFITH. [SEAL.]
mark.

Witness: J. CHESTER.

[U. S. Int. Rev. Stamp. $1.00, cancelled.]

STATE OF CALIFORNIA, } ss:
County of Kern, }

On this seventh day of September, A. D. 1870, personally appeared before me, Julius Chester, a justice of the peace of said county, Ellis Griffith personally known to me to be the person who subscribed his name to this instrument, and who acknowledged to me that he did the same freely and voluntarily for the uses therein mentioned.

JULIUS CHESTER,
Justice of the Peace.

A full, true, and correct copy of the original, recorded at the request of Alexis Godey, Sep. 28th, A. D. 1870, at 11 o'clock, a. m.

T. J. WILLIAMS, *Recorder.*

I hereby certify the foregoing to be a correct copy of the original deed as the same appears of record in my office.

Witness my hand and official seal this 11th day of November, A. D. 1875.

[SEAL.] F. W. CRAIG, *Recorder.*

(Endorsed:) Filed July 22, 1879. L. S. B. Sawyer, clerk.

309 COMPL'T'S EX. 2.

In the Probate Court of Kern County, California.

In the matter of the estate of John G. Griffith, deceased.

I, Ellis Griffith, the brother and surviving partner of John G. Griffith, deceased, hereby consent that Alexis Godey shall, as administrator of the estate of said deceased, settle the same, without prejudice to my rights as surviving partner, to claim the undivided one-half of the proceeds of said estate after the payment of the debts thereof and the expenses of administration.

Havilah, Kern county, Cala., Aug. 9th, 1870.

ELLIS GRIFFITH.

Attest: J. W. FREEMAN.

I hereby certify the above and foregoing to be a correct copy of the original relinquishment of rights now on file in my office.

Witness my hand and seal of said probate court, this 8th day of November, A. D. 1875.

[SEAL.] F. W. CRAIG, *Clerk.*

310 (Endorsed:) Filed Aug. 11, 1870. T. J. Williams, cl'k, by A. A. Bermudez, d'y. Filed July 22d, 1879. L. S. B. Sawyer, clerk. By J. F. O'Beirne, d'p'y cl'k.

311 This indenture, made the seventh day of November, in the year of our Lord one thousand eight hundred and seventy, between Alexis Godey, of Kern county, California, party of the first part, and L. Peres and Pedro Altube, parties of the second part.

Witnesseth: That the said party of the first, for and in consideration of the sum of five thousand dollars gold coin of the United States of America to him in hand paid by the said parties of the first part, the receipt whereof is hereby acknowledged, *both* remised, released, and forever quit-claimed, and by these presents doth remise, release, and foreve quit-claim unto the said parties of the second part, and to their heirs and assigns, all that certain lot, piece, or parcel of land situate, lying, and being in the county of Kern, State of California, and bounded and particularly described as follows, to wit:

Said land being known as the Senigita, a possessory claim purchased by A. Godey from Ellis Griffith, and duly recorded September 28th, 1870, in Book of Deeds, vol. 2, page 117, Kern county, and more particularly described as follows, to wit:

312 Commencing at a certain point on said Sanigita Gulch, at the foot of a large hill, thence running east one-half mile, thence south one-half mile, thence west one-half mile, thence north one-half mile to the place of beginning, containing one hundred and sixty acres, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the said premises and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the said premises, together with the appurtenances, unto the said parties of the second part and to their heirs and assigns forever. In witness whereof, the said party of the first part hath hereunto set his hand and seal, the day and year first above written.

ALEXIS GODEY. [SEAL.]

[U. S. Int.-Rev. Stamp, $5.00, cancelled.]

STATE OF CALIFORNIA, } ss:
County of Kern. }

313 On this seventh day of November, A. D. one thousand eight hundred and seventy, before me, T. J. Williams, county

clerk and *ex-officio* clerk of the county court in and for said county, personally appeared Alex. Godey, personally known to me to be the individual described in and who executed the annexed instrument, and who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed the seal of said court in this county, the day and year in this certificate first above written.

T. J. WILLIAMS, *Clerk*,
By A. A. BERMUDEZ, *Dy.*

A full, true, and correct copy of the original, recorded at request of A. Godey, November 8th, A. D. 1870, at 30 min. past 9 o'c-k a. m.

T. J. WILLIAMS, *Recorder*,
By A. A. BERMUDEZ, *Dy.*

I hereby [certify] the above and foregoing to be a correct
314 copy of the original deed as the same appears of records in my office.

Witness my hand and official seal, this 10th day of November, A. D. 1875.

[SEAL.] F. W. CRAIG, *Recorder.*

(Endorsed:) Filed July 22, 1879. L. S. B. Sawyer, clerk.

315 COMPL'T'S EXHIBIT "4."

In the Probate Court of the County of Kern, State of California.

In the Matter of the Estate of JOHN G. GRIFFITH, dec'd.

To the hon. the probate court of the county of Kern, State of California:

Alexis Godey, the administrator of the estate of John G. Griffith, deceased, at this the September term, A. D. 1870, (and the first time after his appointment as adm'r,) of said probate court, respectfully returns the following account of sales made by him under the order of this court, dated on the sixteenth day of August, A. D. 1870, and reports as follows, to wit:

That in pursuance of said order of sale he gave public notice, for at least ten days, by notices posted in three public places in the said county of Kern, in which were specified the time and place of sale, as will more fully appear by the notice and affidavit marked "A," hereto annexed and made a part hereof. That at the time and place specified in said notice, to wit, at the ranch of Ellis Griffith, in said county, on the 27th day of August, A. D. 1870, at 12 o'clock
m., he sold to the highest bidders, for cash, the property
316 described in said notices, and also a small amount of property which was discovered after the inventory and appraisement had been made, and which he took into possession, and which is mentioned in the account of sales contained in the affidavit marked "B," hereto annexed and made a part hereof.

That at such sales the persons named in said account of sales became the purchasers of the articles, and at the prices set opposite their respective names. That all of the said property was present at the time of selling. That the said sales were legally made and fairly conducted; that the bidding was spirited, and that the sums bid were not disproportionate to the value of the property sold, all of which will also and more fully appear by said affidavit marked "B." Wherefore the said administrator prays that said sales be confirmed and approved, and declared valid.

Havilah, Sept. 5th, 1870.

ALEXIS x GODEY,
Adm'r of the Estate of John G. Griffith, dec'd.

STATE OF CALIFORNIA, } ss:
County of Kern, }

Alexis Godey, who, as the administrator of the estate of John G. Griffith, deceased, has subscribed the foregoing return and
317 account of sales, being duly sworn, says: That he has read the said return and account, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

ALEXIS GODEY.

Subscribed and sworn to before me, this fifth day of September, A. D. 1870.

J. W. FREEMAN,
Notary Public.

Administrator's Sale.

Notice is hereby given that in pursuance of an order of the probate court of the county of Kern, in the State of California, made on the 16th day of August, A. D. 1870, in the matter of the estate of John G. Griffith, deceased, the undersigned, administrator of said estate, will sell at public auction to the highest bidder, for cash, and subject to confirmation by said probate court, on Saturday, the 27th day of August, A. D. 1870, at 12 o'clock m., at the ranch of Ellis Griffith, in said Kern county, the following personal property, to wit:

225 horses, more or less.
130 head stock cattle, more or less; the brand of deceased.
318 1 light wagon & harness.
August 16th, 1870.

ALEXIS GODEY,
Adm'r of the Estate of John G. Griffith, dec'd.

In the Probate Court of the County of Kern, State of California.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

STATE OF CALIFORNIA, } ss:
County of Kern, }

V. G. Thompson, of said county, being duly sworn, says: That

on the 16th day of August, A. D. 1870, he posted an exact copy of the annexed notice at the court-house door in the town of Havilah, in said county, and on the 17th day of August, A. D. 1870, he posted exact and true copies of the same, being a notice of sale of personal property, by the administrator of the estate of John G. Griffith, deceased, in two other of the most public places in said county, to wit, one at the "Walker's Basin flouring mills," and one at the store of Hudson & Rosemire, in said county.

V. G. THOMPSON.

319 Subscribed and sworn to before me, this 5th day of September, A. D. 1870.

J. W. FREEMAN,
Notary Public.

EXHIBIT "A."

In the Probate Court of the County of Kern, State of California.

In the Matter of the Estate of JOHN G. GRIFFITH, Deceased.

Alexis Godey, adm'r of said estate, being duly sworn, says: That the property described in the annexed notice, marked Exhibit "A," was sold by him to the highest bidders, for cash, at the ranch of Ellis Griffith in said county, on the 27th day of August, A. D. 1870, at 12 o'clock m.; that in addition to the horses mentioned in the inventory, to wit, 142 head he had gathered together on the day of sale a number more, making altogether 173 head.

That there was a small amount of kitchen furniture and other small articles described herein, sold, as follows, to wit:

	Description of Property.	Name of Purhaser.	Amount Bid.
320	173 head of horses, 96 head of cattle, 31 head of calves, making 127 head with the brand of deceased in Kern county	S. C. Williams	$2,000
	1 wagon and harness	"	65
	Kitchen furniture	"	2 50
	1 plow	"	2 50
	1 rifle	"	3 00
	1 x-cut saw	"	1 00
	8 goats	"	3 00
	1 hand saw	"	50
	Making in all the sum of		2,077 50

That all of said property was present at the time of selling; that the said sales were legally made and fairly conducted; and that the sums bid were not disproportionate to the value of the property sold; and further this affiant says not.

ALEXIS GODEY.

Subscribed and sworn to before me, this 5th day of September, A. D. 1870.

J. W. FREEMAN,
Notary Public.

I hereby certify that the above and foregoing to be a correct copy of the original report now on file in my office.

Witness my hand and seal of said probate court, this 8th day of November, A. D. 1875.

[SEAL.] F. W. CRAIG, *Clerk.*

(Endorsed:) Filed Sept. 5, 1870. T. J. Williams, cl'k, by A. A. Bermudez, d. c. Filed July 22, 1879. L. S. B. Sawyer, clerk.

321 COMPL'TS EX. 5.

In the Probate Court of the County of Kern, State of California.

In the matter of the estate of JOHN G. GRIFFITH, deceased.

Upon reading and filing the petition of Alexis Godey, the administrator of the estate of John G. Griffith, deceased, praying for an order to sell the perishable property of said estate, it is hereby ordered that Tuesday, the 16th day of August, 1870, at 11 o'clock a. m. of said day, and the court-room of this court, at the court-house, in the town of Havilah, be, and the same is hereby, appointed as the time and place for hearing said application.

And it is further ordered that notice of at least five (5) days be given for the hearing of said application, by posting notices there according to law.

Havilah, Aug. 11th, 1870. P. T. COLBY, *Probate Judge.*

Attest: T. J. WILLIAMS, *Clerk.*

HAVILAH, *Aug.* 16, 1870.

STATE OF CALIFORNIA, *County of Kern:*

T. J. Williams, being duly sworn, deposes and says: That
322 the foregoing notice was posted according to law in three public places in county.

T. J. WILLIAMS, *Cl'k,*
By A. A. BERMUDEZ, *D. Clerk.*

Subscribed and sworn to before me, this 16th day of August, A. D. 1870.

P. T. COLBY,
County Judge.

STATE OF CALIFORNIA, *County of Kern:*

I, F. W. Craig, county clerk of said county, hereby certify the foregoing to be a correct copy of the original notice and affidavit of posting, now on file in my office.

Witness my hand and seal of said probate court, this 7th day of October, A. D. 1878.

[SEAL.] F. W. CRAIG, *Clerk.*

(Endorsed:) Filed Aug't 16th, 1870. T. J. Williams, clerk, by A. A. Bermudez, d'y. Filed July 22, 1879. L. S. B. Sawyer, clerk.

323 COMPL'S EX. 6.

In the Probate Court of the County of Kern, State of California.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

The people of the State of California, Greeting:

Alexis Godey, the administrator of the estate of John G. Griffith, deceased, having rendered and presented for settlement, and filed in this court his final account of his administration of the estate of said deceased—

It is ordered that Monday, the 27th day of May, A. D. 1872, being a day of a term of said court, to wit, of the May term, A. D. 1872, at 11 o'clock a. m., be appointed for the settlement of said account, and that the clerk give notice thereof by causing notices to be posted in at least three public places in the county at least ten days before said day of settlement, according to law. It is further ordered that a copy of said notice be served upon B. Brundage, Esq., the attorney representing person claiming to be interested in said estate.

P. T. COLBY,

Havilah, May 14th, 1872. *Probate Judge.*

Attest: A. A. BERMUDES, *Clerk.*

STATE OF CALIFORNIA, } ss:
County of Kern, }

324 A. A. Bermudes, being duly sworn, deposes and says: That the within notices were posted according to law.

A. A. BERMUDES.

Subscribed and sworn to before me, this 27th day of May, A. D. 1872.

P. T. COLBY,
County Judge.

STATE OF CALIFORNIA, } ss:
County of Kern, }

I, F. W. Craig, county clerk of said county, hereby certify the foregoing to be a correct copy of the original notice and affidavit of posting now on file in my office.

Witness my hand and seal of said probate court, this 7th day of October, A. D. 1878.

[SEAL.] F. W. CRAIG, *Clerk.*

(Endorsed:) Filed May 27th, 1872. Filed July 22, 1879. L. S. B. Sawyer, clerk.

325 COMPL'T'S EX. 7.

Name.	Residence.	Description of property.	Value of personal property.	Total val.	Total tax.	Remarks.
Ellis Griffith..	Seneguta ..	8 sp'h. gent. horses...	$240			
		216 stock horses.....	2,160			
		120 stock cattle.....	1,680			
		1 wagon.....	75			
		1 dog.				
			4,155	4,155	100 35	Paid.

STATE OF CALIFORNIA, }
County of Kern, } *ss.*:

I, F. W. Craig, county clerk of Kern county, hereby certify the above and foregoing to be a correct copy of the original assessment of Ellis Griffith for the year 1870, taken from the original assessment-roll of said county for said year.

Witness my hand and seal of the county court of said county, this 7th day of October, A. D. 1878.

[SEAL.] F. W. CRAIG, *Clerk.*

(Endorsed:) Filed July 22d, 1879. L. S. B. Sawyer, clerk.

326 COMPLAINANT'S EXHIBIT No. 8.

SAN JOSE, *Nov. 22d*, '78.

Messrs. STETSON & HOUGHTON, *San Francisco.*

DEAR SIRS: According to my books kept during 1870, on the 8th day of June, 1870, I bought of Alexis Godey 44 head of cattle of John Griffith's brand and property. Alexis Godey went to Griffith's ranch [and] picked out the cattle. He drove it 15 miles to San Emilio, where I was, and there Alexis Godey delivered it to me. I received the cattle and paid for it, & then drove it to San Joaquin, and there sold it to Mr. Henry Miller.

I remain, yours truly,

MANUEL MARMOLEJO.

P. S.—On the 8th of June, 1870, I bought the cattle, & on the same day Alex. Godey delivered them to me. On the 9th of June, 1870, I drove them to the San Joaquin.

Yours, &c., M. MARMOLEJO.

(Endorsed:) Filed July 22d, 1879. L. S. B. Sawyer, clerk.

327 D'F'D'TS' EX. 1.

In the Probate Court of the County of Kern, State of California

In the matter of the estate of JOHN G. GRIFFITH, deceased.

To the Honorable P. T. Colby, judge of the probate court of the county of Kern, State of California:

The petition of Alexis Godey, of said county, respectfully shows that J. G. Griffith died on or about the 4th day of May, 1870, at the county of San Louis Obispo, State of California. That said deceased at the time of his death was a resident of the county of Kern, State aforesaid. That said deceased left estate in the county of Kern, State aforesaid, consisting of personal property; that the value and character of said property is as follows, to wit, about one hundred and thirty head of cattle of about the value of $2,500.00, about 225 head of horses, of the value of $2,250.00; that the property of said estate is suffering loss and damage from the want of an administrator, or other persons having authority to preserve the same. That your petitioner is a creditor of the estate, wherefore he prays
328 that he may be appointed special administrator of said estate of John G. Griffith, deceased.

ALEXIS GODEY.

Havilah, July 16, 1870.

I hereby certify the within & foregoing to be a correct copy of the original petition on file in my office.

F. W. CRAIG, *Clerk.* [SEAL.]

(Endorsed:) Filed July 19, 1870. T. J. Williams, c'k, by A. A. Bermudez, d'p. 1201, Filed 14th Sept., 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d'p cl'k.

329 DEF'TS' EX. 2.

In the Probate Court of the County of Kern, State of California.

In the matter of the estate of JOHN G. GRIFFITH, deceased.

It appearing to me, upon the petition of Alexis Godey, that John G. Griffith, deceased, departed this life on or about the 4th day of May, 1870, at the county of San Louis Obispo; that at the time of his death he was a resident of the county of Kern, State of California; that he died intestate, leaving property in the said county of Kern; and that said petitioner is a creditor of said deceased, and prays for special letters of administration on said estate; and the said allegations in said petition appearing to be true, and it likewise appearing that there has been delay in taking out letters of administration, it is ordered that Alexis Godey be appointed special administrator of said estate, with full power and authority to collect and take charge of the estate of the deceased, in whatever county or counties the same may be found, and to exercise such other power as may be necessary for the preservation of said estate, and

330 that letters as such special administrator shall be issued to said Alexis Godey on his giving bond in the sum of $9,000, with sureties to the satisfaction of the undersigned probate judge.

Havilah, July 17th, 1870.

P. T. COLBY,
Probate Judge.

I certify the foregoing to be a correct copy of the original order now on file in my office.

F. W. CRAIG, *Co. Clk.* [SEAL.]

(Endorsed:) Filed July 19, 1870. T. J. Williams, c'k, by A. A. Bermudez, dep. 1201. Filed 14 Sept., 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep'y.

331 DEF'D'TS' EX. 3.

In the Probate Court of the County of Kern, State of California.

In the matter of the estate of JOHN G. GRIFFITH.

To the hon. the probate court of the county of Kern:

Your petitioner, Alexis Godey, respectfully showeth: That John G. Griffith, a resident of the said county of Kern, died on or about the fourth day of May, 1870, intestate, at the county of San Louis Obispo, and having estate in said county of Kern, consisting of personal property; that he was a single man, and your petitioner does not know who are his heirs, except that deceased has a brother resident of said Kern county who, at the time of the death of said deceased, was a copartner, and who is now a surviving partner of said deceased, by the name of E. Griffith; that the estate of said deceased consists of one hundred and thirty head of cattle of about the value of twenty-five hundred dollars, and about two hundred and twenty-five head of horses of about the value of twenty-two hundred

332 and fifty dollars; that your petitioner is a creditor of said deceased; that said deceased is indebted to him in the sum of seven hundred and twenty-five dollars on his promissory note without any security, and in the further sum of about three hundred dollars for interest due thereon, and for moneys laid out and expended for taxes to and for the use and benefit of said deceaesd; that your petitioner, so far as he has been able to ascertain the same, alleges that said deceased is indebted in all in about the sum of fourteen hundred dollars; that your petitioner is the principal and largest creditor of said estate, and he therefore prays that in default of any application by relatives of the deceased, or other persons better entitled, administration of said estate be granted to him, to which end your petitioner asks that all proper notice be given according to law, and that a day of hearing be fixed, and that all orders and proceedings necessary in the premises be made and had in favor of this application, and your petitioner will ever pray, &c.

ALEXIS GODEY.

Havilah, Kern Co., Aug. 1st, 1870.

333 I hereby certify the foregoing to be a correct copy of the original on file in my office.

F. W. CRAIG, *Co. Clerk.* [SEAL.]

(Endorsed:) Filed Aug. 1, 1870. T. J. Williams, clerk, by A. A. Bermudez, dep't. Filed 14th Sept., 1877. L. S. B. Sawyer, clerk, by S. F. O'Beirne, dep'y.

334 DEF'TS' EX. 4.

In the Probate Court of Kern County, California.

In the Matter of the Estate of JOHN G. GRIFFITH, Deceased.

I, Ellis Griffith, the brother and surviving partner of John G. Griffith, deceased, hereby consent that Alexis Godey shall, as administrator of said deceased, settle the same, without prejudice to any rights as surviving partner, to claim the undivided one-half of the proceeds of said estate, after the payment of the debts thereof, and the expense of administration. Havilah, Kern county, Cal'a, August 9th, 1870.

ELLIS GRIFFITH.

Attest: J. W. FREEMAN.

I hereby certify the foregoing to be a correct copy of the original relinquishment on file in my office.

F. W. CRAIG, *Co. Clerk.* [SEAL.]

(Endorsed:) Filed Aug. 11, 1870. T. J. Williams, cl'k, by A. A. Bermudez, d'p. 1201. Filed 14 Sept., 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep'y clerk.

335 DEF'TS' EX. 5.

Resignation of Special Adm'r.

In the Probate Court of the County of Kern, State of California.

In the Matter of the Estate of JOHN G. GRIFFITH, Deceased.

I, Alexis Godey, having been duly appointed special administrator of the estate of said deceased, the 19th day of July, 1870, and qualified as such, and having this day been appointed administrator thereof, do hereby resign my said appointment as such special administrator, and pray to be duly discharged upon the settlement of my account, which is herewith filed. Havilah, Aug. 11th, 1870.

ALEXIS GODEY, *Special Adm'r.*

I hereby certify the foregoing to be a correct copy of the original resignation on file in my office.

F. W. CRAIG, *Co. Clerk.* [SEAL.]

(Endorsed:) Filed Aug. 11, 1870. T. J. Williams, cl'k, by A. A. Bermudez, d'p. 1201. Filed 14th Sept., 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d'p'y cl'k.

336 DEF'D'TS' EX. 6.

In the Probate Court of the County of Kern, State of California.

In the Matter of the Estate JOHN G. GRIFFITH, deceased.

To the Hon. probate court of Kern county:

The undersigned, special administrator of said estate, submits the following report of his administration thereof, from the date of his appointment, to wit, from July 19th, 1870, to Aug. 11th, 1870, inclusive. The property which has come into his charge, as near as can be estimated, is as follows: About 225 head of horses and stock of horses together, and about 130 head of stock cattle which has been gathered on the ranch of Ellis Griffith, and which are claimed as partnership property by said Ellis Griffith as a surviving partner of deceased; the said Ellis Griffith declaring his unwillingness and inability to settle the copartnership business as surviving partner of deceased, surrenders the contract of said property to the undersigned, and alleges his claim to an undivided one-half of the proceeds of said property after deducting the expenses of administration and the payment of debts of the estate; that said property is now being taken care of by the undersigned on the said ranch;

337 that he has paid out the following sums of money for expenses of administration, to wit:

July 20.	To Vacquero Loretto for gathering cattle		$10 00
25.	" vacqueros for do.		15 00
	" paid for 100 lbs. flour @ 25		
	" coffee for use of vacquero		20 00
Aug. 1.	" vacquero gathering horses		20 00
	" sugar for vacqueros, 25 lbs. @ 25		6 25
	For sending to Santa Barbara Co. for cattle		20 00
	" sending to San Luis Obispo for property of estate		20 00
	" clerk's fees of probate court		5 00
	" att'y's fees		100 00
			216 25
	" paid sheriff Kern Co. for fees in tax suit		20 00
			236 25

That the claims presented to the undersigned against said estate and allowed are as follows, to wit, the claim of the undersigned, being a promissory note of deceased for the sum of $725, and interest thereon, amounting to $890.81, and various small demands which have not yet been allowed; that no money has come into his hands as administrator belonging to said estate.

ALEXIS GODEY,
Special Adm.

338 STATE OF CALIFORNIA, } ss:
County of Kern, }

Alexis Godey, of said county, being duly sworn, says: I am the

special administrator of the estate of John G. Griffith, deceased; the annexed and foregoing report and account of my whole administration of the said estate as such special administrator is in all respects just and true, and according to the best of my knowledge, information, and belief contains a full, true, and particular account of my disbursements on account of said estate, from the commencement of my administration thereof down to the 11th day of August, 1870. I further state that the items of expenditure not exceeding twenty dollars, for which no vouchers are annexed or produced, have actually been paid and disbursed by me as set forth in said report; and I further state that the said report and account exhibits not only the debts which have been paid, but also a statement of all debts which have been duly presented and allowed during the said period embraced in said report.

ALEXIS GODEY.

339 Subscribed and sworn to before me, on the 11th day of August, 1870.

J. W. FREEMAN,
Notary Pub.

I hereby certify the foregoing to be a correct copy of the original report on file in my office.

F. W. CRAIG, *Co. Clerk.* [SEAL.]

(Endorsed:) Filed August 11, 1870. T. J. Williams, c'k, by A. A. Bermudez, d'p. Filed 14th Sept'r, 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d'p'y.

340 DEF'TS' EX. 7.

In the Probate Court of the County of Kern, State of California.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

Alexis Godey, special administrator of the estate of John G. Griffith, deceased, having filed his resignation as such administrator, praying to be discharged from the trust, and it appearing to the court that the said special administrator of said estate has duly qualified as administrator of said estate, and has duly settled his account as such special adm'r, and that he has duly delivered the property of the estate to Alexis Godey, adm'r thereof, it is hereby ordered that the resignation of said special administrator be, and the same is hereby, accepted, and he is hereby released and discharged from his said trust, and his said special letters of administration are vacated.

August 11th, 1870.

P. T. COLBY,
Co. Judge & ex-officio Probate Judge.

I hereby certify the foregoing to be a correct copy of the original order on file in my office.

F. W. CRAIG, *Co. Clerk.* [SEAL.]

341 (Endorsed:) Filed Aug. 11, 1870. T. J. Williams, cl'k, by A. A. Bermudez, dep. 1201. Filed 14th Sept., 1877. L. S. B. Sawyer, cl'k, by J. F. O'Beirne, d'p'y.

342 DEF'D'TS' EX. 8.

In the Probate Court of the Couty of Kern, State of California.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

The petition of Alexis Godey, a creditor of said deceased, praying for letters of administration upon the estate of said deceased, coming on regularly to be heard, and due proof having been made to this court that the clerk had given notice thereof for this day by causing notices to be posted up in at least three public places in the county, one of which was at the place where the court is held, stating the name of the deceased, the name of the applicant, and the term of the court at which the application would be heard, the same having been given at least ten days before the hearing, as appears by the affidavit of T. J. Williams, a competent witness, which is read and filed herein, and it being proved by the oath of the petitioner that the said John G. Griffith died on or about the sixteenth day of May, 1870, intestate, in the county of Santa Barbara, of this State, and that he was a resident of the county of Kern at the time of his death, and has left estate in this county and within
343 the jurisdiction of this court; and no person interested in said estate appearing to contest the application of the said petitioner, and his personal estate being shown to be of the value of $4,500 or thereabouts:

It is ordered that letters of administration upon the estate of the said John G. Griffith, deceased, issue to said Alexis Godey upon his taking the oath and filing a bond according to law in the sum of $9,000.

Aug. 11th, 1870. P. T. COLBY,
County Judge and ex-officio Probate Judge.

I hereby certify the foregoing to be a correct copy of the original order on file in my office.

F. W. CRAIG, *Co. Clerk.* [SEAL.]

(Endorsed:) Filed Aug. 11, 1870. T. J. Williams c'k, by A. A. Bermudez, d'p. 1201. Filed 14 Sept., 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d'p'y.

344 DEF'TS' EX. 9.

STATE OF CALIFORNIA, *County of Kern:*

Alexis Godey is hereby appointed administrator of the estate of John G. Griffith, deceased.

Witness T. J. Williams, clerk of the probate court of the county of Kern, with the seal thereof affixed, the 11th day of August, A. D. 1870.

By order of the court.

[SEAL.] T. J. WILLIAMS, *Clerk,*
By A. A. BERMUDEZ, *Deputy Clerk.*

STATE OF CALIFORNIA, } ss:
County of Kern, }

I do solemnly swear that I will support the Constitution of the United States and the constitution of the State of California, and that I will perform the duties of administrator according to law.

ALEXIS GODEY.

Subscribed and sworn to before me, this 11th day of August, A. D. 1870.

T. J. WILLIAMS, *Clerk,*
By A. A. BERMUDEZ,
Deputy County Clerk.

A true copy of the original.
Attest: F. W. CRAIG, *Clerk.*

345 (Endorsed:) Filed August 11th, 1870. T. J. Williams, clerk, by A. A. Bermudez, dep. clerk. 1201. Filed 14 Sept'r, 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d'p'y cl'k.

346 D'F'D'TS' EX. 10.

In the Probate Court of the County of Kern, State of California.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

I, T. J. Williams, county clerk of the county of Kern and *ex-officio* clerk of the probate court, do hereby certify that W. W. Hudson, James E. Rosemire, and Thomas Flakes have been duly appointed appraisers of the estate of John G. Griffith, deceased, by order of the court, duly entered and received on the 11th day of August, A. D. 1870.

Witness my hand and seal of said probate court, this 11th day of August, 1870.

[SEAL.] T. J. WILLIAMS, *P. Cl'k,*
By A. A. BERMUDEZ, *De.*

STATE OF CALIFORNIA, } ss:
County of Kern, }

J. E. Rosemire and Thomas Fleck, duly appointed appraisers of the estate of John G. Griffith, deceased, being duly sworn, each for himself, says: That he will truly and honestly and impar-
347 tially appraise the property of said estate which shall be exhibited to him according to the best of his knowledge and ability.

J. V. ROSEMYER.
THOMAS FLECK.

Subscribed and sworn to before me, this 15th day of August, A. D. 1870.

[SEAL.] JULIUS CHESTER,
Notary Public.

Inventory and Appraisement.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

Total 142 horses, @ $9	$1,278 00
127 stock cattle, @ $15	1,905 00
1 branding iron	50
1 wagon & harness	100 00
	$3,283 50

STATE OF CALIFORNIA, } ss:
County of Kern, }

Alexis Godey, administrator of the estate of John G. Griffith, deceased, being duly sworn, says: That the annexed inventory contains a true statement of all the estate of the deceased that has come to the knowledge and possession of deponent, and particularly of all money belonging to said deceased, and all just claims of
348 said deceased against this deponent.

ALEXIS GODEY.

Subscribed and sworn to before me, this 22nd day of August, A. D. 1870.

J. W. FREEMAN,
Notary Public.

We, the undersigned, duly appointed appraisers of the estate of John G. Griffith, deceased, do certify that the property mentioned in the foregoing appraisement has been exhibited to us, and we appraised the same at three thousand two hundred and eighty-three $\frac{50}{100}$ dollars.

Aug. 22, 1870.

J. V. ROSEMIRE.
THOMAS FLECK.

Estate of John G. Griffith, deceased, to J. V. Rosemire & Thomas Fleck, Dr.

To compensation for services in appraising said estate items, as follows:

Ten (10) days' service in appraising said estate, at $5 per day	$50 00

Necessary disbursement.
Received payment,

J. V. ROSEMIRE.
THOMAS FLECK.

STATE OF CALIFORNIA, } ss:
County of Kern, }

349 J. V. Rosemire and Thomas Fleck, the appraisers abovenamed, being duly sworn, each for himself, says that the foregoing bill of items is correct and just, and that the services have been duly rendered as therein set forth.

J. V. ROSEMIRE.
THOMAS FLECK.

Subscribed and sworn to before me, this 22nd day of August, A. D. 1870.

JULIUS CHESTER,
Notary Public.

I hereby certify the foregoing to be a correct copy of the original inventory now on file in my office.

F. W. CRAIG, *Co. Clerk.* [SEAL.]

(Endorsed:) Filed Sept. 5, 1870. T. J. Williams, c'k, by A. A. Bermudez, d'p. 1201. Filed 14th Sept., 1878. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep'y

350 DEF'TS' EX. 11.

In the Probate Court of the County of Kern, State of California.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

To the hon. the probate court of the county of Kern, in the State of California:

The petition of Alexis Godey, administrator of John G. Griffith, deceased, respectfully shows:

That he is informed and believes that there is property in which the deceased is interested in the county of Santa Barbara; that said property consists of not less than twenty nor more than 23 head of cows; that said property is in the possession of one J. A. Haynes, who holds the same under a contract with deceased for the period of two years, as your petitioner is informed and believes; that said property cannot be taken in charge by your petitioner and administered upon in the usual course of administration; that it would be expensive so to do, or to take the necessary legal steps to rescind the said contract; that said property can be sold at private sale to greater advantage to the estate than by exposing the same at public
351 sale; that no one would give as much for said property at public sale, owing to its situation, as your petitioner believes he can realize from it by making a private sale thereof.

Wherefore your petitioner prays that after notice of at least five days' given of the hearing of this application, this court order a private sale to be made of the whole of the property herein mentioned, belonging to said estate, or that such other or further order may be made as is meet in the premises.

Aug. 11th, 1870. ALEXIS GODEY, *Adm'r.*

I hereby certify the foregoing to be a correct copy of the original petition now on file in my office.

F. W. CRAIG, *Co. Clerk.* [SEAL.]

(Endorsed:) Filed Aug. 11, 1870. T. J. Williams, cl'k, by A. A. Bermudez, d'p. 1201. Filed 14th Sept'r, 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep'y cl'k.

352 DEF'TS' EX. 12.

In the Probate Court of the County of Kern, State of California.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

On reading and filing the petition of Alexis Godey, the administrator of the estate of John G. Griffith, deceased, praying for an order to sell certain personal property of said estate, it is ordered that Tuesday, the 16th day of August, A. D. 1870, at 11 o'clock, in the forenoon of said day, and the court-room of this court, at the court-house, in the town of Havilah, be and the same are hereby appointed as the time and place for hearing said application.

And it is further ordered that notice of at least five days be given of the hearing of said application by posting notices according to law.

Havilah, August 11th, 1870.

P. J. COLBY,
County Judge and ex-officio Probate Judge.

I hereby certify the foregoing to be a correct copy of the
353 original order now on file in my office.

F. W. CRAIG, *Co. Clerk.* [SEAL.]

(Endorsed:) Filed Aug. 11, 1870. T. J. Williams, cl'k, by A. A. Bermudez, dep't. 1201. Filed 14 Sept., 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d'p'y cl'k.

354 DEF'L'TS' EX. 13.

In the Probate Court of the County of Kern, State of California.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

Application having been made to this court, by the petition in writing of Alexis Godey, administrator of the estate of John G. Griffith, deceased, heretofore filed in this court, to wit, on the 11th day of August, A. D. 1870, for an order to sell at private sale certain property situate in the county of Santa Barbara, to wit, not less than 20 nor more than 23 cows and calves, in which it is alleged the said deceased is interested, and this court having thereupon made an order appointing the 16th day of August, A. D. 1870, at eleven o'clock a. m., and the probate court-room at the court-house, in the town of Havilah, as the time and place for hearing said application and directing notice of at least five days to be given of said hearing by posting now, on this 16th day of August, A. D. 1870, at said hour and at said court-room, the time and place appointed for said hearing as aforesaid, upon due proof to the satisfaction of this court,
355 by the affidavit of A. A. Bermudez, a competent witness, of the due posting of notices of said hearing in three of the most public places in said county on the 11th day of August, A. D. 1870; and it appearing to this court by the testimony of said administrator that all the allegations in said petition are true, and that a sale of said property is for the best interests of said estate, and it appearing

to this court that all the proceedings in the matter of said application have been conducted strictly in accordance with the statute in such case made and provided, and no one interested in said estate or otherwise having made or filed any objections or exceptions to the order prayed for, it is hereby ordered, adjudged, and decreed that the said administrator sell, at private sale, for the best price, all the interest of said deceased in and to not less than 20 nor more than 23 head of cows and calves, now in Santa Barbara county, in the possession of one J. A. Haynes, and held by him under a contract with deceased, and that said administrator return to the probate court of this county, at its next term after such sale, an account of sale verified by his affidavit.

P. T. COLBY,
County Judge and ex-officio Probate Judge.

Havilah, Kern Co., Aug. 16th, A. D. 1870.

356–7 I hereby certify the foregoing to be a correct copy of the original order now on file in my office.

F. W. CRAIG, *Co. Clk.* [SEAL.]

(Endorsed:) Filed August 16, 1870. T. J. Williams, c'k, by A. A. Bermudez, d'p. Filed 14th Sept'r, 1877. L. S. B. Sawyer, cl'k, by J. F. O'Beirne, d'p'y.

358 D'FD'TS EX. 14.

In the Probate Court of the County of Kern, State of California.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

To the hon. the probate court of the county of Kern, in the State of California:

Alexis Godey, the administrator of the estate of John G. Griffith, deceased, respectfully returns the following account of the private sale made by him under the order of this court, dated on the 16th day of August, A. D. 1870, and reports as follows, to wit: That on the twenty-ninth day of August, A. D. 1870, in pursuance of said order he sold, subject to the approval of this court, all the interest of said deceased in and to not less than 20 nor more than 23 head of cattle, in the county of Santa Barbara, and in the posssession of one Haynes, as recited in the order aforesaid; that the number thereof so sold was 23 head of cows and calves; and that one Ellis Griffith was the purchaser thereof for the sum of four hundred and fifty dollars, being the full value thereof; whereupon the said administrator prays that the said sale be approved by this court.

ALEXIS GODEY,

359 *Administrator of the Estate of John G. Griffith, deceased.*

Havilah, Sept. 5, 1870.

STATE OF CALIFORNIA, } ss:
County of Kern, }

Alexis Godey, the administrator of the estate of John G. Griffith,

deceased, who subscribed the foregoing return and account of sales as such, being duly sworn, says: That he has heard read the said return and account, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

ALEXIS GODEY.

Subscribed and sworn to before me, this 5th day of Sept., A. D. 1870.

J. W. FREEMAN,
Notary Public.

I hereby certify the foregoing to be a correct copy of the original report now on file in my office.

F. W. CRAIG, *Co. Clerk.* [SEAL.]

(Endorsed:) Filed Sept. 5, 1870. T. J. Williams, c'k, by A. A. Bermudez, d'p.

360–1 DEF'TS' EX. 15.

Order Confirming Sale Property at Private Sale.

In the Probate Court of the County of Kern, State of California.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

On the reading and filing the account, verified by the affidavit of the administrator, of the sale of personal property at public sale, to wit, twenty-three head of cows and calves, belonging to the estate of deceased, in the county of Santa Barbara:

It is hereby ordered that the sale of said personal property be, and the same is hereby, approved and confirmed and declared valid.

Dated Sept. 5, A. D. 1870.

P. T. COLBY,
County Judge and ex-officio Probate Judge.

I hereby certify the foregoing to be a correct copy of the original order now on file in my office.

F. W. CRAIG, *Co. Clerk.* [SEAL.]

(Endorsed: Filed Sept. 5, 1870. T. J. Williams, cl'k, by A. A. Bermudez, dep.

362 D'F'D'TS' EX. 16.

In the Probate Court of the County of Kern, State of California.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

To the Hon. probate court of the county of Kern:

The petition of Alexis Godey, administrator of the estate of John G. Griffith, deceased, respectfully shows that after due and legal proceedings had in this court, your petitioner duly received letters of administration of said estate, to wit, on the 11th day of August, A.

D. 1870, and that said letters have not been revoked; that the property of said [deceased], consisting of about a hundred and thirty head of stock cattle, and about two hundred and twenty-five head of horses and stock horses, is perishable, likely to decrease in value, become worse by keeping, and is subject to loss and expense; that one Ellis Griffith claims, as a partner of deceased, an undivided half of said property, yet relinquishes all right to the possession or management thereof, without prejudice to his claim of the undivided one-half of the proceeds of said property after the payment of the debts of the estate and expenses of administration, and that a sale thereof
363 is, therefore, for the best interest of the estate. Wherefore your petitioner prays that after notice of at least five days given of the hearing of this application, this court will order a sale of the said property to be made, or that such other or further order may be made as is meet in the premises.

Aug. 11th, 1870.

ALEXIS GODEY,
Administrator of said Estate.

I hereby certify the foregoing to be a correct copy of the original petition now on file in my office.

F. W. CRAIG, *Co. Clerk.* [SEAL.]

(Endorsed:) Filed Aug. 11, 1870. J. J. Williams, clerk, by A. A. Bermudez, d'p.

364–5 D'F'D'TS' EX. 17.

In the Probate Court of the County of Kern, State of California.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

Upon reading and filing the petition of Alexis Godey, the administrator of the estate of John G. Griffith, deceased, praying for an order to sell the perishable property of said estate, it is ordered that Tuesday, the 16th day of August, 1870, at eleven o'clock in the forenoon of said day, and the court-room of this court, at the court-house, in the town of Havilah, be, and the same are hereby, appointed as the time and place for hearing said application; and it is further ordered that notice of at least five days be given of the hearing of said application by posting notice thereof according to law.

Havilah, August 16, 1870.

P. T. COLBY,
County Judge and ex-officio Probate Judge.

Attest: T. J. WILLIAMS,
Clerk of Probate Court.

I hereby certify the foregoing to be a correct copy of the original order now on file in my office.

F. W. CRAIG, *Co. Clerk.* [SEAL.]

(Endorsed:) Filed Aug. 11, 1870. T. J. Williams, cl'k, by A. A. Bermudez, d'p. 1201. Filed 14 Sept., 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d'p'y cl'k.

366 D'F'D'TS' EX. 18.

In the Probate Court of the County of Kern, State of California.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

Application having been made to this court by the petition in writing of Alexis Godey, administrator of the estate of John G. Griffith, deceased, heretofore filed in this court, to wit, on the 11th day of August, A. D. 1870, for an order to sell the perishable property of the estate, and this court having thereupon made an order appointing the 16th day of August, A. D. 1870, at eleven o'clock a. m., and the probate court-room, at the court-house in the town of Havilah, as the time and place for hearing said application, and directing notices of at least five days to be given of said hearing by posting notices according to law, now, on this said 16th day of August, A. D. 1870, at said hour and at said court-room, the time and place appointed for said hearing as aforesaid, upon due proof to the satisfaction of this court by the affidavit filed this day of A. A. Bermudez, a competent witness, of the due posting of notices of
367 said hearing in three of the most public places in said county on the 11th day of August, A. D. 1870; and it appearing to this court by the testimony of said administrator that all the allegations in said petition are true, and that a sale of the perishable property of said estate is for the best interest of the same and necessary for the payment of claims and expenses of administration, and it further appearing to this court that all the proceedings in the matter of said application have been conducted strictly in accordance with the statute in such case made and provided, and no one interested in said estate or otherwise having made or filed any objection or exceptions to the order prayed for, it is hereby ordered, adjudged, and decreed that the said administrator sell the perishable property, consisting of about 225 head of horses, 130 head of stock cattle, and the brand thereof of said estate at public auction, and after public notice given for at least ten days by notices posted in three public places in said county, in which shall be specified the time and place of sale. And it is further ordered that the sale of said property be made at the late residence of the said deceased, to wit, at the ranch of Ellis Griffith, Esq., and that no sale
368–9 shall be made of any of said property which is not present at the time of selling, and that said administrator return to the probate court of said county, at its next term after such sale, an account of sales, verified by his affidavit.

P. T. COLBY,
County Judge and ex-officio Probate Judge.

Dated at Havilah, this 16th day of August, A. D. 1877.

I hereby certify the foregoing to be a correct copy of the original order now on file in my office.

F. W. CRAIG, *Co. Clerk.* [SEAL.]

(Endorsed:) Filed Aug. 16, 1872. T. J. Williams, cl'k, by A. A.

Bermudez, dep't. Filed 14th Sept., 1877. L. S. B. Sawyer, cl'k, by J. F. O'Beirne, d'p'y cl'k.

370 D'F'D'TS' EX. 19.

In the Probate Court of the County of Kern, State of California.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

To the hon. the the probate court of the county of Kern, State of California:

Alexis Godey, the administrator of the estate of John G. Griffith, deceased, at this the September term, A. D. 1870, (and the first term after his appointment as administrator) of said probate court, respectfully returns the following account of sales made by him under the order of this court, dated on the sixteenth day of August, A. D. 1870, and reports as follows, to wit: That in pursuance of said order of sale he gave public notice for at least ten days by notices posted in three public places in the said county of Kern, in which were specified the time and place of sale, as will more fully appear by the notice and affidavit marked "A," hereto annexed and made a part hereof; that at the time and place specified in said no-
371 tice, to wit, at the ranch of Ellis Griffith, in said county, on the 27th day of August, A. D. 1870, at twelve o'clock m., he sold to the highest bidder, for cash, the property described in said notices, and also a small amount of property which was discovered after the inventory and appraisement had been made, and which he took into possession, and which is mentioned in the account of sales contained in this affidavit marked "B," hereto annexed and made a part hereof; that at such sales the persons named in said account of sales became the purchasers of the articles and at the prices set opposite their respective names; that all of the said property was present at the time of selling; that the said sales were legally made and fairly conducted; that the bidding was spirited, and that the sums bid were not disproportionate to the value of the property sold; all of which will also and more fully appear by said affidavit marked "B." Wherefore the said administrator prays that said sales be confirmed and approved and declared valid.

Havilah, Sept. 5, 1870.

ALEXIS GODEY,
Administrator of the Estate of John G. Griffith, deceased.

STATE OF CALIFORNIA, }
County of Kern, } *ss:*

372 Alexis Godey, who, as the administrator of the estate of John G. Griffith, deceased, has subscribed the foregoing return and account of sales, being duly sworn, says: That he has heard read the said return and account and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters he believes if to be true.

ALEXIS GODEY.

Subscribed & sworn to before me, this fifth day of September, A. D. 1870.

J. W. FREEMAN,
Notary Public.

Administrator's Sale.

Notice is hereby given that in pursuance of an order of the probate court of the county of Kern, in the State of California, made on the 16th day of August, A. D. 1870, in the matter of the estate of John G. Griffith, deceased, the undersigned, administrator of said estate, will sell, at public auction, to the highest bidder, for cash, and subject to confirmation by said probate court, on Saturday, the 27th day of August, A. D. 1870, at 12 o'clock m., at the ranch of
373 Ellis Griffith, in said Kern county, the following personal property, to wit:

225 horses, more or less.
130 head stock cattle, more or less.
The brand of deceased.
1 light wagon and harness.
August 16, 1870.

ALEXIS GODEY,
Administrator of the Estate of John G. Griffith, deceased.

374–5 In the Probate Court of the County of Kern, State of California.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

STATE OF CALIFORNIA, }
County of Kern, } ss:

N. G. Thompson, of said county, being duly sworn, says: That on the 16th day of August, A. D. 1870, he posted an exact copy of the annexed notice at the court-house door, in the town of Havilah, in said county, and on the 17th day of August, A. D. 1870, he posted exact and true copies of the same, being a notice of sale of personal property by the administrator of the estate of John G. Griffith, deceased, in two other of the most public places in said county, to wit: One at the Walker Basin Flouring Mills, and one at the store of Hudson & Rosemire, in said county.

N. G. THOMPSON.

Subscribed & sworn to before me, this 5th day of September, A. D. 1870.

J. W. FREEMAN,
Notary Public.

376 In the Probate Court of the County of Kern, State of California.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

Alexis Godey, adm'r of said estate, being duly sworn, says: That the property described in the annexed notice, marked Exhibit "A," was

sold by him to the highest bidder for cash at the ranch of Ellis Griffith, in said county, on the 27th day of August, A. D. 1870, at 12 o'clock m.; that, in addition to the horses mentioned in the inventory, to wit, 142 head, he had gathered together on the day of sale a number more, making altogether 173 head; that there was a small amount of kitchen furniture and other small articles described herein sold as follows, to wit:

Description of Property.	Name of Purchaser.	Amount Bid.
173 head of horses, 96 head of cattle, and 31 head calves, making 127 head with the brand of the deceased in Kern county	S. C. Williams	$2,000 00
1 wagon and harness	"	65 00
Kitchen furniture	"	2 50
377 1 plow	"	2 50
1 rifle	"	3 00
1 x-cut saw	"	1 00
8 goats	"	3 00
1 hand-saw	"	50
Making, in all, the sum of		2,077 50

That all of said property was present at the time; that the said sales were legally made and fairly conducted; and that the sums bid were not disproportionate to the value of the property sold, and further this affiant says not.

ALEXIS GODEY.

Subscribed and sworn to before me, this 5th day of September, A. D. 1870.

J. W. FREEMAN,
Notary Public.

"Exhibit B."

I hereby certify the within and foregoing to be a correct copy of the original now on file in my office.

F. W. CRAIG, *Co. Clerk.* [SEAL.]

(Endorsed:) Filed Sept. 5, 1870. T. J. Williams, c'k, by A. A. Bermudez, d'p. Filed 14th Sept'r, 1877. 1201. L. S. B. Sawyer, cl'k, by J. F. O'Beirne, d'p'y.

378 DEF'TS' EX. 20.

Order Affirming Sales of Personal Property.

In the Probate Court of the County of Kern, State of California.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

On reading and filing the account verified by the affidavit of the administrator of the sale of personal property, to wit, 173 head of horses, 127 head of cattle with the brand of deceased in Kern

county, 1 wagon & harness, kitchen furniture, 1 plow, 1 rifle, 1 x-cut saw, 8 goats, and one hand-saw:

It is hereby ordered that the sale of said personal property be, and the same is hereby, approved and confirmed, and declared valid.

Dated Sept. 5, A. D. 1870.

P. T. COLBY,
County Judge and ex-officio Probate Judge.

I hereby certify the foregoing to be a correct copy of the original order now on file in my office.

F. W. CRAIG, *Co. Clerk.* [SEAL.]

(Endorsed:) Filed Sept. 5, 1870. T. J. Williams, clerk, by A. A. Bermudez, dep. 1201. Filed 14 Sept., 1877. L. S. B. Sawyer, cl'k, by J. F. O'Beirne, d'p'y.

379 DEF'TS' EX. 21.

To the hon. the probate court of the county of Kern, in the State of California:

In accordance with the provision of the statute requiring the administration of an estate to render for the information of the court an exhibit under oath, showing—

1st, The amount of money received and expended;

2nd, The amount of all claims presented against the estate and the names of the claimants; and,

3rd, All other matters necessary to show the condition of its affairs—

I, Alexis Godey, administrator of the estate of John G. Griffith, deceased, do hereby, at this the third term of this court, after my appointment as such administration, make and render this my account and exhibit of said estate:

Money received as follows:

1870.			
Aug. 29.	From sales of personal property at public sale	$2,077	50
	From ditto at private sale	450	00
		2,527	50

Money expended as follows:

380

	Am't paid out, as per report of special orders	$236	25
Aug. 16.	I'd Loretto My'd doun stock	20	00
2.	" " " "	6	00
	" Mexican for 11 days' veq	11	00
	" Mayor doun stock	20	00
22.	" Hora Ant'd Custro for vacq'o	20	00
	" for 100 lb flour for vacq'o	10	00
	" " 10 lb sugar "	2	50
	" appraisers of estate	50	00
27.	" Hora Antoin'd Certro, vaq	12	00

Aug. 27.	P'd Jesus Medius, 2 days & hu. ve..	$4 00		
	" county clerk's fees	10 00		
	" attorneys' fees	100 00		
Aug. 27.	" H. Comuco Huran, 15 day ve..	15 00		
Sept. 5.	" V. G. Thompson, post notice sale	10 00		
	" clerk's fees to date	25 00		
Nov. 8.	" sheriff for taxes of estate	101 35		
		$653 10		653 10
	Bal. in hand of adm'r			$1,874 40

Claims against Estate.

Names of Claimants.	Nature of.	Remarks.	Am't of Claim.
Alexis Godey	P'y note	All. Sept. 11, 1870	$826 50
Robert Johnson	Acc't	Allowed	92 50
James White	Note	Rejected	125 00
Am't of claims			$1,044 00
			$919 00

381 The claims presented and allowed, amounting to nine hundred nineteen dollars, and the monied assets, $1,874 $\frac{40}{100}$ dollars, leaves a balance in the hands of the administrator with which to pay outstanding claims not presented & allowed the sum of $955 $\frac{40}{100}$ dollars.

ALEXIS GODEY.

STATE OF CALIFORNIA, } ss:
County of Kern, }

Alexis Godey, administrator of the above-named estate, being duly sworn, says that the foregoing exhibit and statement rendered by him are true in substance and in fact.

ALEXIS GODEY.

Subscribed and sworn to before me, on the 6th day of March, A. D. 1871.

J. W. FREEMAN,
Notary Public.

I hereby certify the foregoing to be a correct copy of the original exhibit now on file in my office.

F. W. CRAIG, *Co. Clerk.* [SEAL.]

(Endorsed:) Filed March 6, 1871. A. A. Bermudez, clerk. Filed 14th Sept., 1877. L. S. B. Sawyer, cl'k, by J. F. O'Beirne, D'p'y.

382 D'F'D'TS' EX. 22.

Annual Account of Administration.

Alexis Godey, administrator, in account with the estate of John G. Griffith, dec'd.

1871, Aug. 11th.	To cash received from sales personal property, as per report on file Mar. 6, 1871	2,527 50
1871—Aug. 11.	Am't collected from James Crocker, due dec'd	25 00
		$2,552 50
	By cash paid out, as per reports on file Mar. 6th, 1871	1,572 10
	P'd Kern Co. Courier for adv. notice to creditors	8 33
	By balance	972 07
		$2,552 50

STATE OF CALIFORNIA, } ss:
County of Kern, }

Alexis Godey, of said county, being duly sworn, says: I am the administrator of the estate of John G. Griffith, deceased; the annexed and foregoing account being filed as and for the first annual account of my administration of the said estate is in all respects just and true, and according to the best of my knowledge, information, and belief contains a full, true, and particular account of all my receipts and disbursements on account of the said estate from the com-
383 mencement of my administration thereof down to the 11th day of August, A. D. 1871, and of all sums of money belonging to the said estate which have come into my hands as such administrator, or which have been received by any other person by my order or authority for my use, and I do not know of any error or omissions in the said account to the prejudice of any of the parties interested in the said estate.

I further state that the items of expenditure, not exceeding twenty dollars, in the said report of March 6th, 1871, which is referred to in said account, and made a part of this account, for which no vouchers are annexed or produced, have actually been paid and disbursed by me at the place where the date when and to the parties to whom the said payments are stated in the said accounts to have been made, respectively; and I further state that the said account exhibits not only the debts which have been paid, but also a statement of all debts (reference being had to said report of March 6th, 1871), which have been paid, but also a statement of all debts which have been duly presented and allowed during the said period embraced in the said account.

ALEXIS GODEY.

384 Subscribed and sworn to before me, this 11th day of August, 1871.

J. W. FREEMAN,
Notary Public.

I certify the foregoing to be a correct copy of the original now on file in my office.

[SEAL.] F. W. CRAIG,
Co. Clerk, Kern Co.

(Endorsed:) Filed August 11th, 1871. H. D. Bequette, deputy clerk. Filed 14 Sept'r, 1877. L. S. B. Sawyer, cl'k, by J. F. O'Beirne, dep.

385 D'F'D'T'S EX. 23.

In the Probate Court of the County of Kern, State of California.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

In the hon. the probate court of the county of Kern, in the State of California.

Alexis Godey, the administrator of the estate of John G. Griffith, deceased, on this the 11th day of August, A. D. 1871, being upon the expiration of one year from the date of his appointment as such administrator, respectfully renders the following report of his administration: That letters of administration of said estate were issued to him on the 11th day of August, 1870; that immediately after his appointment as such administrator he caused notice to creditors to be published in the Kern County Courier, a newspaper published in said county; that within ten months after the first publication of said notice two claims against said deceased, accompanied by proper affidavits and supported by satisfactory vouchers, were presented to the said administrator and allowed, the amount, the dates of the presentation and allowance; and all the par-

386 ticulars of which claims are contained in the reference made in the statement of debts annexed to said administrator's annual account this day rendered; that one other claim was presented to said administrator and rejected; that said administrator has sold all the personal property belonging to said estate, and collected all the debts due to the said deceased, and that a balance (without allowance of commissions to the adm'r) of $\$972\frac{3}{100}$ dollars remains in his hands, as appears by said annual account. Said administrator prays that the judge of this court appoint a day of a term of this court for settlement of said account, and that on the day appointed, or on such subsequent day as the hearing may be adjourned to, after being first proved that due and legal notice has been given, to the satisfaction of this court, of the time appointed for the settlement of said account has been given, said account be settled and allowed by this court.

ALEXIS GODEY,
Administrator of the Estate of John G. Griffith, deceased.

Havilah, Aug. 11, 1871.
19—131

387 I certify the foregoing to be a correct copy of the original now on file in my office.

[SEAL.] F. W. CRAIG, *Co. Clerk.*

(Endorsed:) Filed Aug. 11, 1871. H. D. Bequette, deputy clerk. Filed 14th Sept., 1877. L. S. B. Sawyer, cl'k, by J. F. O'Beirne, d'p'y.

388 DEF'TS' EX. 24.

In the Probate Court of the County of Kern, State of California.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

Alexis Godey, the administrator of the estate of John G. Griffith, deceased, having tendered and presented for settlement and filed in this court his annual account, and filed therewith a report of his administration of said estate. It is ordered that Monday, the 4th day of September, A. D. 1871, being a day of a term of said court, to wit, of the September term, 1871, at 11 o'clock a. m., be appointed for the settlement of the said account, and that the clerk give notice thereof by causing notices to be posted in at least three public places in this county at least ten days before said day of settlement according to law.

P. T. COLBY,

Havilah, Aug. 11th, 1871. *Probate Judge.*

I hereby certify the foregoing to [be] a correct copy of the original order now on file in my office.

F. W. CRAIG, *Co. Clerk.* [SEAL.]

389 (Endorsed:) Filed Aug. 11, 1871. H. D. Bequest, deputy clerk. Filed 14 Sept., 1877. L. S. B. Sawyer, cl'k, by J. F. O'Beirne, d'p'y.

390 DEF'D'TS' EX. 25.

In Probate Court of Kern County, California. September Term of Court, 1881.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

Ellis Griffith, brother and next of kin of estate of John G. Griffith, deceased, by B. Brundage, his attorney, respectfully excepts to annual report of administrator of said estate for reasons assigned as follows: That said report filed in this court is incorrect and untrue in this, viz., that previous to the filing of the inventory and appraisement in said estate said administrator sold 43 head of cattle at $23 per head belonging to said estate to one Marmellijo, which said amount of property, and the proceeds thereof, are not mentioned in said inventory or return of sales. That there was a much greater amount of property belonging to said estate there is shown by said inventory and appraisement. That said administrator did not sell said property to said Williams, as is stated in said return of sales. That afterward, to wit, after the return of account of sales as made

to said Williams, said administrator sold the cattle and horses
391 reported as sold to Williams to one Pedro Altude for a much larger sum than stated in said return and account of sales; the said Ellis Griffith respectfully, therefore, requests this court to postpone the day of having and confirming this the annual account of said administration, and that justice may be had, witnesses be subpœn-ed to attend the day to be appointed for a hearing thereof, and to testify in behalf of Ellis Griffith as to the foregoing matters; that John Funk, Williams, Mammelijo, Pedro Aluras are persons knowing to facts above stated.

B. BRUNDAGE,
Att'y for Ellis Griffith.

I hereby certify the within & foregoing to be a correct copy of exceptions to annual acc't now on file in my office.

F. W. CRAIG, *Co. Clerk.* [SEAL.]

(Endorsed:) Filed Sept. 4, 1871. A. A. Bermudez, clerk. Filed 14th Sept., 1877. L. S. B. Sawyer, cl'k, by J. F. O'Beirne, dep'y.

392 DEF'TS' EX. 26.

Order Continuing Hearing of Annual Account.

In the Probate Court of Kern County, State of California, September Term, 1871.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

The time for showing annual settlement of the administration having come, on motion of B. Brundage it is ordered that the time for hearing said annual settlement of administrator be set for the first Monday of the November term of this court; and it is further ordered that the clerk issue subpœna for J. Funk, S. C. Williams, —— Marmoejo, and Pedro Altube to appear at said time as witnesses.

P. T. COLBY, *Judge.*

Attest: A. A. BERMUDEZ, *Clerk.*

I hereby certify the foregoing to be a correct copy of the original order taken from the probate records of Kern county.

F. W. CRAIG, *Co. Clerk.* [SEAL.]

(Endorsed:) 1201. Filed 14 Sept., 1877. L. S. B. Sawyer, cl'k, by J. F. O'Beirne, dep'y cl'k.

393 D'F'D'TS' EX. 27.

In the Probate Court of Kern County, State of California.

Estate of JOHN G. GRIFFITH, dec'd.

STATE OF CALIFORNIA, } ss:
County of Kern, }

B. Brundage, being duly sworn, deposes and says: That he is the

attorney of Ellis Griffith, and as such attorney, and on behalf of said Ellis Griffith, at the September term of this court he filed in this court exceptions to the annual account made and rendered by the administrator of the estate of John G. Griffith, deceased, at the day of said term of court at which said matter was set for hearing; that thereupon this court, by order duly made and entered in this cause, directed the clerk of this court to issue subpœnas for John Funk, Williams, Marmelijo, Pedro Altibas, and such other witnesses as affiant might desire in the cause was then continued to the first day of November term of this court; that on or about the 9th day of October, 1871, affiant caused subpœnas to be issued and placed in the hands of W. H. Coons, sheriff of Kern county, for service upon John Funk, Pedro Altuda, James Crocker, Williams, and Marmalijo,
requiring said persons to be and appear at this term of court
394 on the first day thereof and testify as to the facts stated in the
aforesaid exceptions to said account; that affiant believed said persons have been subpœn-ed by the sheriff and would be present at this term of court, and did not know to the contrary until about thirty minutes previous to the opening of court, when he was informed by the sheriff that no service had been made by him; that said sheriff did not demand his fees in advance of affiant; that said witnesses are residents of Kern county, and are necessary and material at the trial of this cause; that affiant expects to prove by said Marmalijo that he purchased of said A. Godey forty head of cattle belonging to said estate and paid therefor $800 to said Godey previous to the issuance of letters of administration to said Godey, which said amount of cattle, or the proceeds thereof, are not mentioned in the inventory on file in this cause, nor are the proceeds thereof mentioned in the account of sales or the annual account filed therein by said administrator; that affiant expects to prove by John Funk that said administrator sold three head of cattle
belonging to said estate to him at the rate of $25 per
395 head, and by James Crocker that said administrator sold one
head of stock cattle to him for $25, the same belonging to said estate, all of which is not set forth in the return and account of sales or in the said annual account. That affiant expects to prove by the said Williams that he purchased the property mentioned in the return of sales as the agent for said Godey, and that afterward the said Godey sold the same to the said Pedro Altuda for the sum of $8,000, which last fact affiant expects to prove by said Pedro Altuda, as well as by the testimony of said Williams. Affiant further expects to prove by the testimony of the aforesaid witnesses that there was a much greater amount of property belonging to said estate that came into the possession of said administrator than is shown by the inventory and appraisement of said estate. That affiant has no other witnesses present by which said facts can be proven, and knows of no other witnesses by whom said facts can be proven.

B. BRUNDAGE.

Subscribed and sworn to before me, this 7th day of Nov., A. D. 1874.

A. A. BERMUDEZ, *Clerk.*

396 I hereby certify the foregoing to be a correct copy of affidavit of B. Brundage, now on file in my office.

F. W. CRAIG, *Co. Clerk.* [SEAL.]

(Endorsed:) Filed Nov. 7, 1871. A. A. Bermudez, clerk. 1201. Filed 14th Sept., 1877. L. S. B. Sawyer, cl'k, by J. F. O'Beirne, d'p'y.

397 DEF'TS' EX. 28.

In the Probate Court of Kern County, State of California. At Chambers. November Term, 1871.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

In the matter of the contest of Ellis Griffith, and the exceptions thereto by him to the annual account of the administrator of the estate of said John G. Griffith, deceased, came up for hearing at this November term of this court, and B. Brundage, the counsel of said Ellis Griffith, [filed] an affidavit of due diligence in attempting to procure the attendance of witnesses on behalf of said Ellis Griffith, said witnesses not being in attendance; and, on motion of said B. Brundage, for a continuance and for an order for the attendance of witnesses, and for the expenses of procuring their attendance, to be paid out of the estate, it is ordered that the clerk of this court issue subpœnas for John Funk, one Marmolejo, Williams, Pedro Altube, James Crocker, and such other persons, witnesses, to testify on behalf of said Ellis Griffith; and it is further ordered that the sheriff be, and is hereby, ordered and required to serve the subpœnas
398 aforesaid; and it is further ordered that the expense of issuing and serving said subpœnas, and the taking of the depositions of such witnesses as may be absent from the county or residing more than 30 miles from the place of holding this court, be paid out of the assets belonging to said estate in the hands of the administrator of said estate.

Let process issue in accordance with the foregoing, returnable March 5th, 1872.

P. T. COLBY,
County Judge.

To A. A. BERMUDEZ, *County Clerk.*

I hereby certify the foregoing to be a correct copy of the original order taken from the probate court minutes of Kern county.

F. W. CRAIG, *Co. Clerk.* [SEAL.]

(Endorsed:) 1201. Filed 14th Sept'r, 1877. L. S. B. Sawyer, cl'k, by J. F. O'Beirne, dep'y cl'k.

399 DEF'TS' EX. 29.

In Probate Court of Kern County, State of California. March Term, 1872.

TUESDAY, *March 5th*, 1872.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

The annual account of Alexis Godey, adm'r herein, heretofore rendered, having come in for settlement on the fourth day of September, 1871, at which time proof having been made to the satisfaction of the court, and filed herein, that due notice of the settlement thereof had been given as required by law, and B. Brundage, Esq., representing Ellis Griffith, who claims to have an interest in said estate, having appeared and filed exceptions to said account, the settlement thereof was continued from time to time to this day, by order of the court, duly entered upon the minutes thereof.

And now upon this fifth day of March, 1872, at 11 o'clock a. m., the time to which said settlement was continued as aforesaid, the said matter coming on to be heard, the exceptions heretofore filed by Ellis Griffith, by his attorney, B. Brundage, Esq., were

400 withdrawn, and proof being heard by the court showing that said amount is correct, and is duly sustained by sufficient and proper vouchers, except some items of twenty dollars, and under and not amounting to $500, which said items are proven, as required by law, by the affidavit of the administrator, the same is informed. And it is hereby ordered, adjudged, and decreed that the said account being so confirmed, the same is hereby in all respects allowed and affirmed; and it appearing that the said administrator has in his hands sufficient funds belonging to said estate, it is hereby ordered, adjudged, and decreed that he pay all the claims against said estate heretofore allowed.

P. T. COLBY,
Probate Judge.

March 5th, 1872.
Attest:
A. A. BERMUDEZ, *Clerk.*

I certify the foregoing to be a correct copy of the original order taken from the probate records of Kern county.
F. W. CRAIG, *County Clerk.* [SEAL.]

(Endorsed:) 1201. Filed 14th Sept., 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d'p'y cl'k.

401 D'F'D'TS' EX. 30.

Final Account of Administration.

Alexis Godey, administrator, in account with the estate of John G. Griffith, deceased.

1872, May 14.	To balance on hand upon rendering annual account	$972 07

By cash paid since rendering annual account, as follows, to wit:

May 5.	W. H. Coons, sheriff Kern Co., for fees	48 20
	John Funk (witness fees)	19 00
	J. V. Rosemyer (do.)	28 00
	Thos. Fleck (do.)	38 00
	A. A. Bermudez (clerk's fees)	28 20
	J. W. Freeman (att'y fees)	100 00
	Commissions on $1,000	70 00
	" " 1,552.50	77 62
	Extra expenses of adm'r from litigation in attending court	50 00
		$449 02
	Bal. due estate	$513 05
		$972 07

Recap't Annual Account.

Cash rec'd from sales of property	$2,527 50	
Collected of Crocker	25 00	
		$2,552 50
Paid out as per report of Mar. 6, and to Aug. 11th, 1871, as per voucher in annual acc't		1,580 43
		$972 07

402 STATE OF CALIFORNIA, } *ss:*
County of Kern, }

Alexis Godey, of said county, being duly sworn, says: I am the administrator of the estate of John G. Griffith, deceased. The annexed and foregoing account, being filed as and for the final account of my administration of the said estate, is in all respects just and true, and according to the best of my knowledge, information, and belief contains a full, true, and particular account of all my receipts and disbursements on account of the said estate from the commencement of my administration thereof down to the 14th day of May, A. D. 1874, and of all sums of money belonging to the said estate which have come into my hands as such administrator, or which have been received by any other person by my order or authority for my use, and I do not know of any error or omission in the said account to the prejudice of any of the parties interested in the said estate. I further state that all the items of expenditure not exceeding twenty dollars in my report of March 6th, 1871, and my annual account of August 11th, 1871, to which are referred for specified items
403 of expenditure, and prayed to be made a part thereof, for which no vouchers are annexed or produced, have actually been paid and disbursed by me at the place where, the date when, and to the parties to whom the said payments are stated in the said account and report to have been made respectively; and I further state that the said account exhibits not only the debts which have

been paid, but also a statement of all debts (reference being had to the report aforesaid) which have been duly presented and allowed during the said period embraced in the said account.

ALEXIS GODEY.

Subscribed & sworn to before me, this 14th day of May, 1872.

J. W. FREEMAN,
Notary Public.

I certify the foregoing to be a correct copy of the original now on file in my office.

[SEAL.]

F. W. CRAIG,
Co. Clerk, Kern Co.

(Endorsed:) Filed May 14, 1872. A. A. Bermudez, clerk. Filed 14th Sept., 1877. L. S. B. Sawyer, cl'k, by J. F. O'Beirne, d'p'y cl'k.

404 D'F'D'TS' EX. 31.

In the Probate Court of the County of Kern, State of California.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

To the hon. the probate court of the county of Kern, in the State of California:

Alexis Godey, administrator of the estate of John G. Griffith, deceased, respectfully shows:

That he was appointed such administrator and entered upon the discharge of the duties of the trust on the eleventh day of August, A. D. 1870.

That — appears by the inventory and appraisement on file, all the property belonging to said estate that has come into his hands was appraised at the sum of $3,283.50.

That as appears by the exhibit rendered by him at the third term after his appointment, and by subsequent statements and by vouchers on file, that the whole amount realized from sales of property belonging to said estate at public and private sale was 2,527.50, and that the sum of $25 was collected of Jas. Crocker for a debt due said estate, and not included in the inventory, making
405 the whole amount of the assets of the estate to be charged to the administrator $2,552.50, and that the debts amounted to the sum of $1,841.83, all of which have been paid and the vouchers filed.

That on the 11th day of August, 1871, he rendered his annual account of his administration of said estate, showing a balance of $972.67 cash on hand at that time, and accounting for the whole proceeds of property, &c., coming into his hands as administrator.

That said sum has been reduced by litigation and otherwise. That he has this day rendered a second and final account of his administration, showing a balance of $710.67 cash on hand, the amount of estate accounted for being the sum of $2,552.50, upon which said administrator claims the sum of $147.62 as his commissions, and

the sum of $50 for expenses to which he has been subjected by reason of litigation with said estate by persons claiming to be interested therein, reducing the amount of cash due said estate to the sum of $513.05.

That he has charged himself with all moneys coming into his hands from sales of property belonging to said estate, and sold
406 all of which he has any knowledge, and collected all debts due the estate of which he has any knowledge or information. Said administrator therefore prays a settlement of his administration of said estate, and that this court appoint a day for the settlement of said final account, and that after due and legal notice given thereof by the clerk said final account be settled and allowed and approved by this court.

ALEXIS GODEY,
Administrator of the Estate of John G. Griffith, d'c'd.

I certify the foregoing to be a correct copy of the original now on file in my office.

[SEAL.] F. W. CRAIG,
Co. Clerk, Kern Co.

(Endorsed:) Filed May 14, 1872. A. A. Burmudez, clerk. Filed 14th Sept., 1877. 1201. L. S. B. Sawyer, cl'k, by J. F. O'Beirne, d'p'y.

407 DEF'D'S' EX. 32.

In the Probate Court of the County of Kern, State of California.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

Alexis Godey, the administrator of the estate of John G. Griffith, deceased, having rendered and presented for settlement and filed in this court his final account (and filed herewith a report) of his administration of said estate: It is ordered that Monday, the 27th day of May, A. D. 1872, being a day of a term of said court, to wit, of the May term, A. D. 1872, at 11 o'clock a. m., be appointed for the settlement of the said account, and that the clerk give notice thereof by causing notices to be posted in at least three public places in this county at least ten days before said day of settlement according to law. It is further ordered that a copy of said notice be served upon B. Brundage, Esqr., the attorney representing herein, claiming to be interested in said estate.

Havilah, May 14, 1872. P. T. COLBY,
Probate Judge.

408 I hereby certify the foregoing to be a correct copy of the original order now on file in my office.

F. W. CRAIG, *Co. Clerk.* [SEAL.]

(Endorsed:) Filed May 14, 1872. A. A. Bermudez, clerk. 1201. Filed 14 Sept., 1877. L. S. B. Sawyer, cl'k, by J. F. O'Beirne, d'p'y cl'k.

409 D'F'D'TS' EX. 33.

In the Probate Court of the County of Kern, State of California.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

Alexis Godey, administrator of the estate of John G. Griffith, deceased, having filed in this court, on the 14th day of May, 1872, his final account of his administration, and the 27th day of May, 1872, at 10 o'clock a. m., having been appointed by this court for the settlement of said account, the said administrator appeared in this court with his counsel, and B. Brundage, Esq., the attorney for heirs claiming to be interested in said estate, being present, and due proof having been made to the satisfaction of this court that notice of the settlement of said account had been given according to the statute in such case made and provided and according to the order of this court, and no objections being made or filed to said account, nor to any item thereof, it was by the court ordered that the said account be referred to A. A. Bermudez, the court commissioner, as a referee,

410 to examine and report upon the same; and in the meantime the further hearing of the settlement of the account was continued to 2 o'clock p. m. of said day.

And now, on this 27th day of May, A. D. 1872, at 2 o'clock p. m., the said parties appearing before this court, and said referee's report being rendered and filed and read, and the court having examined the said account, and it appearing to the court that the said account is correct and just and duly sustained by legal and proper vouchers, and the said administrator has duly accounted for all the estate which has come into his possession, and the said referee, after a full examination of the said account, recommended that the same be allowed and approved, and no objections being made nor exceptions filed:

It is hereby ordered, adjudged, and decreed that the report of the said referee be confirmed, and that the said account be allowed and approved, and that the same be declared settled at the sum of five hundred and thirteen dollars and five cents in the hands of said administrator at the time of filing said account, which said sum the

411 said administrator is directed to retain, subject to the further expenses of the estate and to distribution to the heirs and those entitled.

May 27th, 1872.

P. J. COLBY,
County Judge and ex-officio Probate Judge.

I certify the above to [be] a correct copy of the original now on file in my office.

[SEAL.]

F. W. CRAIG,
Co. Clerk, Kern Co.

(Endorsed:) Filed May 27th, 1872. A. A. Bermudez, clerk. 1201. Filed 14 Sept., 1877. L. S. B. Sawyer, cl'k, by J. F. O'Beirne, d'p'y.

412 DEF'D'TS' EX. 34.

In Probate Court of Kern County, California. May Term of Probate Court.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

To the hon. the probate court of the county of Kern:

Your petitioner respectively represents and shows to this court, at this May term of said court, that Ellis Griffith and Morris Griffith are the brothers of John G. Griffith, deceased, and, so far as known to your petitioner, they are his only heirs-at-law. That on the 22d day of July, 1871, the said Ellis Griffith, by instrument in writing, thereto sold, assigned, and transferred an undivided one-half of all his right, title, and interest in said estate and property held by the administrator of said estate, which said written instrument is hereunto annexed a copy marked "A," and made a part hereof. That said Ellis Griffith, during the lifetime of said deceased, was an equal partner of said John G. Griffith, deceased, and was, at the time of the death
413 of said John G. Griffith, an owner of an undivided one-half interest in all the estate of said deceased, and that afterwards came into the possession of Alexis Godey, the administrator of said estate of said deceased; that said Ellis Griffith assented to the appointment of said Alexis Godey, administrator of said estate, in writing, on file in this cause, in which said written assent the interest of said Ellis Griffith as partner of said deceased in said estate is set forth and mentioned. That the whole of the property belonging to said estate and said Ellis Griffith has been sold by order of said court, and the said Alexis Godey, as administrator of said estate, has filed in this court his final account thereof, and the same has been set for hearing on this 27th day of May, A. D. 1872, the same being a day of term of this court, and at this, the day set for said hearing, your petitioner respectfully shows and represents to this court that said Ellis Griffith is lawfully entitled to the following proceeds thereof, to wit:

First. To a one-half of the proceeds of said estate as an equal partner of said deceased, in his lifetime, as the owner thereof.

Second. To a one-half interest in the balance thereof, the same being a one-fourth part of the proceeds of said estate.

414 Wherefore your petitioner prays that an order may be made directing that your petitioner, as the attorney and assignee of the said Ellis Griffith, have and receive from the administrator of said estate the one-half of the net proceeds of said estate as shown by the final account of said administrator, and as the owner of the same, and an undivided one-half of the balance thereof, as one of the surviving heirs of said deceased, and that distribution of said estate may accordingly be made, hereby waiving further notice thereof therein, and for such other and further relief therein as may be just.

Havilah, May 27, 1872. B. BRUNDAGE,
Petitioner and Attorney for Ellis Griffith.

Know all men by these presents, that I, Ellis Griffith, of the county of Kern, do hereby sell, transfer, and assign and set over to B. Brundage the one-half of all money or property of any and every kind and nature that he may collect by suit or otherwise in my name from Alexis Godey on account of said Godey's taking and receiving the same as administrator of the estate of John G.
415 Griffith, deceased, or otherwise, and I hereby authorize and empower the said B. Brundage to demand, sue for, collect prosecute any and all demands I now have or may have against said Alexis Godey or other person, in my name or the name of the said B. Brundage to prosecute, sue for, and defend, and to receive and receipt for the same, and grant releases and satisfaction therefor, in his own name or otherwise, hereby ratifying all that he the said, B. Brundage, may do in the premises. In witness whereof I have hereunto set my hand and seal this 22nd day of July, 1871.

ELLIS GRIFFITH.

Signed, sealed, and delivered in presence of—
CHAS. AUSTIN.

I hereby certify the foregoing to be a correct copy of the original petition now on file in my office.

F. W. CRAIG, *Co. Clerk.* [SEAL.]

(Endorsed:) 1201. Filed May 27, 1872. A. A. Bermudez, clerk. Filed 14th Sept., 1877. L. S. B. Sawyer, cl'k, by J. F. O'Beirne, d'p'y cl'k.

416 DEF'D'TS' EX. 35.

In the Probate Court of the County of Kern, State of California. July Term, A. D. 1872. Monday, July 8th, 1872.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

Ellis Griffith, one of the heirs of John G. Griffith, deceased, having heretofore, to wit, on the 27th day of May, A. D. 1872, filed in the probate court of the county of Kern, in the State of California, his petition, setting forth, among other things, that he and Morris Griffith are the brothers of John G. Griffith, deceased, and, so far as known, his only heirs at law, and praying a distribution of the funds in the hands of Alexis Godey, administrator of the estate of said deceased, after the payment of all the debts and expenses of administration thereof, and that the said petitioner is entitled to one-half of said funds as surviving partner of said deceased, and one-half of the remainder as heir at law, being three-fourths of all of said estate so remaining in the hands of said administrator. And the probate judge having thereupon, to wit, on the 27th day of May,
417 A. D. 1872, made an order directing all persons interested in the said estate to appear before this court at the court-room thereof, in the county of Kern, on Monday, the 1st day of July, A. D. 1872, at 10 o'clock a. m., to show cause, if any they have, why an order should not be granted distributing the said estate to the heirs

of the deceased and the persons entitled, and directing a copy of said order to show cause to be published for four successive weeks in the Southern California, a newspaper published in the county of Kern aforesaid, and the said matter having, on the first day of July, been continued by the said court to the 8th day of July, A. D. 1872, at 10 o'clock a. m., for proof of publication of said order, and on the said 8th day of July, A. D. 1872, the said matter having again come on for a hearing, and upon due proof, to the satisfaction of the court, by the affidavit of J. S. Brittian, the publisher of said newspaper, of the due publication of said order to show cause for four successive weeks, commencing on the 6th day of June, 1872, and upon proof of due service of a copy of the said order to show cause upon all persons entitled to such notice, the said petitioner appearing
418 by his counsel, and the said administrator also appearing by his attorney, and it appearing to the satisfaction of the court from the evidence and the records on file in said matter that the administrator has heretofore, to wit, on the 14th day of May, 1872, filed his final account as such administrator with a report of his administration, and after due and legal proceedings thereupon had, said account was finally settled and allowed on the 27th day of May, A. D. 1872, and said estate is now in a condition to be closed.

That the said John G. Griffith died intestate in the county of San Luis Obispo on or about the 4th day of May, 1870, being a citizen of said Kern county at the time of his death, and leaving — estate in said Kern county, in copartnership with the petitioner aforesaid; that the said Alexis Godey was duly appointed and qualified as administrator of the estate of said John G. Griffith, deceased, on the 11th day of August, A. D. 1870; that he duly filed a true inventory and appraisement of all the estate of deceased which had come to his possession or knowledge. That immediately after his appointment he caused to be published in the manner and for
419 the period prescribed by this court and by law, in a newspaper printed in the county and designated by the court, a notice to the creditors of the deceased, requiring all persons having claims against the deceased to exhibit them with the necessary vouchers within ten months after the date of the notice at a place specified in said notice. That more than one year has elapsed since his appointment as such administrator, and more than ten months have elapsed since the first publication of said notice to creditors; that all the claims against the said deceased exhibited to the said administrator, all the debts of the said estate, all the expenses of the administration thereof incurred to the settlement of said final account, and all taxes that have attached to or accrued against the said estate have been paid and discharged. That the said administrator has fully accounted for all the estate that came to his hands as such administrator, and that the whole estate, so far as has been discovered, has been fully administered and the residue thereof is now ready for distribution to the heirs and the persons entitled. That since the rendering of said final account and the
420 filing of said petition, as aforesaid, the sum of sixty dollars has been paid out by said administrator as necessary expenses of

administration as follows: For printer's fees for publishing the order aforesaid, twenty dollars; for clerk's fees, the sum of twenty-five dollars; and for expenses of the administration in attending an extra term of this court upon the order to show cause why distribution should not be made, the sum of fifteen dollars. That the said administrator is entitled to a credit on the balance in his hands upon the settlement of his final account of said several sums, amounting to sixty dollars, which, taken from the sum of $513.05 in his hands upon said settlement, will now leave in his hands the sum of four hundred and fifty-three dollars and five cents subject to distribution; that the said deceased left him surviving two brothers, his heirs-at-law; that the petitioner, Ellis Griffith, is a brother of said deceased, and also a surviving partner, and entitled to the undivided one-half of said sum in the hands of the administration for distribution as such, being the sum of $226.52, and also to one-half the remainder as
421 one of the heirs-at-law of deceased, being the further sum of one hundred and thirteen dollars and twenty-six cents, amounting in all to 339\frac{78}{100}$; that Morris Griffith is a brother of deceased and heir-at-law, and entitled to the remainder in the hands of said administrator, being the sum of one hundred and thirteen dollars and twenty-six cents:

Now, on this 8th day of July, A. D. 1872, on motion of B. Brundage, Esq'r, the counsel for petitioners, the said Alexis Godey, administrator as aforesaid, being present and consenting, and no exceptions being filed, and no objections being made by any person interested in the said estate, or otherwise, and it fully appearing, to the satisfaction of the court, that the said Ellis Griffith and Morris Griffith are the only heirs-at-law of said deceased, that the administration of said estate is now in a condition to be closed, and no further administration is necessary before the distribution thereof, and that therefore, by the evidence and the operation of law, the funds so remaining in the hands of the administration goes to the said Ellis Griffith and Morris Griffith as aforesaid, and the said Ellis Griffith having, by an instrument of writing filed in this cause, and dated July 22, 1871, assigned to B. Brundage an undivided
422 one-half of his interest in said estate, from which it appearing that said B. Brundage is entitled to have the sum of one hundred and sixty-nine and $\frac{39}{100}$ dollars, being the one-half thereof, it is hereby ordered, adjudged, and decreed, and this court, by virtue of the power and authority therein vested, doth order, adjudge, & decree, as follows: That all the acts and proceedings of said administrator, as reported to this court and appearing upon the records thereof, be, and the same are hereby, approved and confirmed, and that the residue of the estate [of] John G. Griffith, deceased, now remaining in his hands as such administrator, and any other property not now known or discovered which may belong to the estate of John G. Griffith, deceased, or in which the said estate may have any interest, be, and the same is hereby, distributed as follows, to wit: The one equal undivided half part thereof is hereby assigned, transferred, set over, delivered, and distributed to the said Ellis Griffith as surviving partner, and the one equal undivided one-half

of the remainder to said Ellis Griffith as the brother and heir-at-law of said deceased, and that one-half the amount of said portion, being one hundred sixty-nine and $\frac{8}{100}$ dollars, be paid by said
423 administrator to said B. Brundage, assignee of said Ellis Griffith, and the other equal undivided half of the said residue, being the sum of one hundred and thirteen dollars and twenty-six cents, be, and the same is hereby, assigned, transferred, set over, delivered, and distributed to the said Morris Griffith, brother and heir-at-law of said deceased. And it is further ordered that the said Alexis Godey, administrator as aforesaid, upon payment of the funds now remaining in his hands to the said heirs and persons entitled as hereinbefore ordered, and upon filing due and proper vouchers and receipts therefor in this court, be fully and finally discharged from his trust as such administrator as aforesaid, and that his sureties shall thereupon and thenceforth be discharged from all liability for the future acts of said administration. And it is further ordered that a certified copy of this decree be recorded in the office of the recorder of Kern county.

Dated Havilah, July 8th, 1872.

P. T. COLBY,
Probate Judge.

(Endorsed:) Filed July 8th, 1872. A. A. Bermudez, clerk. 1201. Filed 14th Sept., 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep'y.

424 DEF'TS' EXHIBIT 36.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

Received, Bakersfield, July 9, 1872, of Alexis Godey, administrator of the estate of John G. Griffith, deceased, the sum of three hundred and thirty-nine & $\frac{75}{100}$ dollars for Ellis Griffith, said amount being his part of the proceeds of said estate, as appears by decree of distribution entered therein in the probate court of Kern county, California, at the July term, A. D. 1872, said amount being the part of the said estate coming to said Ellis Griffith.

B. BRUNDAGE,
Att'y for said Ellis Griffith.

I hereby certify the foregoing to be a correct copy of the original receipt of Ellis Griffith now on file in my office.

F. W. CRAIG, *Co. Clerk.* [SEAL.]

(Endorsed:) Filed July 18, 1872. A. A. Bermudez, clerk. Filed 14 Sept., 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep'y.

425 DEF'TS' EX. 37.

In the Probate Court of the County of Kern, State of California.

In the Matter of the Estate of JOHN G. GRIFFITH, deceased.

Alexis Godey, the administrator of the property left unadminis-

tered of the estate of John G. Griffith, deceased, having this day duly presented to the court satisfactory vouchers showing that he has paid all sums of money due from him, and has delivered up, under the order of this court, all the property of said estate remaining in his hands to the parties entitled, and in particular having produced the receipt of B. Brundage, assignee and attorney for Ellis Griffith, one of the brothers and heirs-at-law, and surviving partner of said John G. Griffith, deceased, showing that he has paid over the money of said estate in accordance with the directions of the decree of distribution made by this court, on the 8th day of July A. D. 1872, to which the said Ellis Griffith, as heir and surviving partner, is entitled, and by order of this court, having paid into court the amount of one hundred thirteen and $\frac{26}{100}$
426 dollars, the distribution share of said estate to which Morris Griffith, as brother and heir of said John G. Griffith, is entitled, (it appearing to the satisfaction of the court that the said Morris Griffith refuses to receive the same, and an order of this court having this day been made and entered on the minutes directing said payment to be made,) and has complied in all respects with the terms of said decree as fully and completely as administrator of said estate, as is required by law, and that, as such administrator, he has performed all the acts lawfully required of him, and certain documentary and other proofs being offered, and the matter being fully examined and considered by the court, and it being shown that the estate of John G. Griffith, deceased, has been fully administered, and that no further property remains in the hands of said administrator, and that no further acts remain to be performed by him: Now, on motion of J. W. Freeman, of counsel for said administrator, it is by the court ordered, adjudged, and decreed that Alexis Godey, administrator as aforesaid, has fully and faithfully discharged the duties of his trust; that he is hereby wholly and absolutely discharged from all further duties and responsi-
427 bilities as such administrator, and that his letters of administration are hereby vacated; that the said estate is declared fully distributed, and the trust settled and closed, and the said administrator and his sureties are hereby released from any liability to be hereafter incurred.

Done in open court, November 4th, 1872.

P. T. COLBY,
County Judge and ex-officio Probate Judge.

I hereby certify the foregoing to be a correct copy of the original final discharge of administrator now on file in my office.

F. W. CRAIG, *Co. Clerk.* [SEAL.]

(Endorsed:) Filed Nov. 12, 1872. A. A. Bermudez, clerk. 1201. Filed 14th Sept., 1877. L. S. B. Sawyer, cl'k, by J. F. O'Beirne, d'p'y.

428 DEF'D'TS' EX. 38.

	Number of acres.	Value of land and improvements.	Value of personal property.	State poll tax.	Total value of all property.	Total tax.
Griffith, John, Senaca Ranch:						
8 Sph. gent. horses ... $240 00						
100 stock horses ... $1,000 00	----	----	1,240 00			
130 stock cattle ... $1,820 00						
Household & kitchen furniture ... $10 00	----	----	1,830 00			
1 wagon ... $15 00	----	----	15 00			
Improvement on public lands ... $100 00	----	100 00				
160 acres of land ...	160	80 00	----	1 paid	3,265 00	77 38

STATE OF CALIFORNIA, } ss:
County of Kern, }

I hereby certify the above and foregoing to be a full, true, and correct copy of the assessment of John Griffith for the year 1869–'70, as appears by the original assessment roll for said year now on file in my office.

Witness my hand and official seal, this 25th day of July, 1877.

[SEAL.]

F. W. CRAIG,
County Clerk and ex-officio Auditor of Kern County.

429 (Endorsed:) 1201. Filed 14th Sept., 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d'p'y cl'k.

430 DEF'TS' EX. 39.

Declaration of Intention.

United States of America, District Court of the 16th Judicial District of the State of California, County of Kern.

I, Ellis Griffith, do declare on oath that it is *bona fide* my intention to become a citizen of the United States of America, and to renounce forever all allegiance and fidelity to all and any foreign prince, potentate, State, and sovereignty whatsoever, and particularly to Queen Victoria, Queen of Great Britain and Ireland.

Subscribed and sworn to this 15th day of July, A. D. 1870, before me.

(Signed)

his
ELLIS x GRIFFITH.
mark.

T. J. WILLIAMS, *Clerk,*
By A. A. BERMUDEZ, *D'y Clerk.*

OFFICE OF THE CLERK OF THE DISTRICT COURT OF THE 16TH JUDICIAL DISTRICT OF THE STATE OF CALIFORNIA, *ss:*

I, F. W. Craig, clerk of the district court of the 16th judicial district of the State of California, county of Kern, said court being a court of record, having common law jurisdiction, and a clerk and seal, do certify that the above is a full, true, and correct copy of the original declaration of intention of Ellis Grffith on his ap-
431 plication to become a citizen of the United States, remaining in my office, upon the records of said court, and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this twenty-fifth day of July, in the year of our Lord one thousand eight hundred and seventy-seven, in the year of our Independence the one hundred and first.

[SEAL.] F. W. CRAIG, *Clerk.*

(Endorsed:) Filed July 15, 1870. T. J. Williams, cl'k, by A. A. Bermudez, d'p'y. 1201. Filed 14 Sept., 1877. L. S. B. Sawyer, cl'k, by J. F. O'Beirne, d'p'y cl'k.

432 DEF'D'TS' EX. 40.

STATE OF CALIFORNIA, *County of Kern,* } *ss:*

Ellis Griffith, being duly sworn, says: That he is a citizen of the United States of America, over 21 years of age, and a resident of the State of California; that he has taken up and occupied in accordance with an act of the Legislature of said State, approved April 20th, 1852, entitled "An act prescribing the mode of maintaining and defending possessory actions on public lands in this State," and of the acts supplemental thereto and amendatory thereof, for the purposes of cultivation and grazing, a certain piece, parcel, or tract of unsurveyed public land situate in Seneguita gulch, Kern county, and more particularly described as follows, to wit: Commencing at a certain point on said gulch at the foot of a large hill; thence running east one-half mile; thence south one-half mile; thence west one-half mile; thence north one-half mile to the place or point of beginning; containing one hundred and sixty acres of land. And deponent further states that he knows of no other claims to said land, and that he holds no other claims under this statute in this State, and that said claim does not embrace more than one hundred and sixty acres of land.

his
ELLIS x GRIFFITH.
mark

433 Subscribed and sworn to before me, this 15th day of July, A. D. 1870.

T. J. WILLIAMS, *Clk,*
By A. A. BERMUDEZ, *D'y.*

A full, true, and correct copy of the original recorded at request of E. Griffith July 15th, A. D. 1870, at 3 o'clock p. m.

T. J. WILLIAMS, *Recorder*,
By A. A. BERMUDEZ, *D'y.*

I hereby certify the above and foregoing to be a correct copy of the original taken from the records of Kern county.

F. W. CRAIG, *Co. Clerk.* [SEAL.]

(Endorsed:) 1201. Filed 14 Sept., 1877. L. S. B. Sawyer, c'k, by J. F. O'Beirne, d'p'y.

434 D'F'D'TS' EX. 41.

STATE OF CALIFORNIA, }
County of Kern, } ss:

Robinson Mackey, resident of said county, and a citizen of the United States, being first duly sworn, deposes and says: That he has settled upon the following-described tract of public land for agricultural and grazing purposes, to wit: Commencing at a point in the cañon commonly known as Griffith's Cañon, 16 rods east of the Sienaguito, thence north 60 rods to a stake, thence west 160 rods to a stake, thence south 160 rods to a stake and a rock mound, thence east 50 rods cañon, 160 rods to a stake and rock mound, thence north 100 rods to the place of beginning. That said tract of land does not embrace more than 160 acres of land; that this affidavit is made in pursuance of the laws of this State, to provide for the maintaining & defending of possessory actions on public lands in this State; and that he has never made any other than this claim under said law; and that there is no other legal claim to said land, so far as he knows or believes; and that the boundaries
435 of the same are marked plainly so as they can be readily traced.

his
ROBINSON x MACKEY.
mark.

Witness: E. C. CALHOUN.

Subscribed and sworn to before me, the undersigned, a notary public in and for said county, Jan'y 27, 1870.

A. D. JONES,
Notary Public.

A full, true, & correct copy of the original recorded at request of A. C. Lawrence August 31, 1870, at 9 o'k a. m.

T. J. WILLIAMS, *Recorder*,
By A. A. BERMUDEZ, *D'y.*

I hereby certify the foregoing to be a correct copy of the original taken from the records of Kern county.

F. W. CRAIG, *County Clerk.* [SEAL.]

(Endorsed:) 1201. Filed 14 Sept., 1877. L. S. B. Sawyer, c'k, by J. T. O'Beirne, d'p'y cl'k.

436 *Bond on Appeal.*

In the Supreme Court of the United States, on Appeal from the Circuit Court of the United States, in and for the Ninth Circuit, District of California.

ELLIS GRIFFITH, Appellant,
vs.
ALEXIS GODEY and C. S. WILLIAMS, Appellees.

Know all men by these presents, that we, Edward Ross and Richard T. Pope, are held and firmly bound unto Alexis Godey and C. S. Williams, the above-named appellees, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Alexis Godey and C. S. Williams, their executors or administrators, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our, heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 10th day of September, A. D. 1881.

Whereas the above-named Ellis Griffith has taken an appeal to the Supreme Court of the United States to reverse the decree
437 rendered in the cause entitled Ellis Griffith, complainant, against Alexis Godey and C. S. Williams, defendants, (number 1201,) by the circuit court of the United States of America, of the ninth judicial district, in and for the district of California: Now, therefore, the condition of this obligation is such, that if the above-named Ellis Griffith shall prosecute his said appeal to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

EDWARD ROSS. [SEAL.]
RICHARD T. POPE. [SEAL.]

UNITED STATES OF AMERICA, } ss:
District of California, }

Edward Ross and Richard T. Pope, being first duly sworn, each for himself deposes and says: That he is a resident and householder in said district and is worth the sum of five hundred dollars, lawful money of the United States of America, exclusive of property exempt from execution and over and above all debts and liabilities.

EDWARD ROSS.
RICHARD T. POPE.

Subscribed and sworn to before me, this 10th day of September, A. D. 1881.

JOS. F. O'BEIRNE,
Comm'r of U. S. Circuit Court, Dist. of Cal'a.

438 (Endorsed:) I hereby approve the form of the within bond and the sufficiency of the sureties therein. (Signed) Lorenzo

Sawyer, circuit judge, 9th judicial circuit. Filed Sept. 10, 1881. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

439 *Clerk's Certificate.*

In the Circuit Court of the United States, of the Ninth Judicial Circuit, in and for the District of California.

ELLIS GRIFFITH *vs.* ALEXIS GODEY and C. S. WILLIAMS.

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States for the district of California, do hereby certify that the foregoing four hundred and thirty-eight written pages, numbered from 1 to 438, both inclusive, contain a full, true, and correct copy of the pleadings, testimony and all the proceedings in the therein entitled cause, and that the same, together, constitute the transcript on appeal in the above-entitled suit.

Witness my hand and the seal of said circuit court, this 3d day of October, A. D. 1881.

[SEAL.]

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE,
Deputy Clerk.

Endorsed on cover: California C. C. U. S. No. 131. Ellis Griffith, appellant, *vs.* Alexis Godey and C. S. Williams. Filed 18th October, 1881.

1139

Office Supreme Court U. S.
FILED.
DEC 12 1884
JAMES H. McKENNEY.
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM—1884.

ELLIS GRIFFITH, *Appellant*,

vs.

ALEXIS GODEY *et al.*, *Appellees.*

No. 131.

Brief on behalf of Appellant.

STETSON & HOUGHTON,
For Appellant.

FRANK W. HACKETT,
Of Counsel.

In the Supreme Court of the United States.

OCTOBER TERM—1884.

ELLIS GRIFFITH, *Appellant*,
vs.
ALEXIS GODEY *et al.*, *Appellees.*
No. 131.

Brief on behalf of Appellant.

STATEMENT OF FACTS.

This is an appeal from the decree of the Circuit Court of the United States for the District of California, entered 1 October, 1879, dismissing a bill in equity. The bill in brief charged one Godey, principal defendant, with improper conduct as administrator, and claimed the profits alleged to have been made by him and one Williams (the other defendant), in the sale of a range and cattle that belonged to the appellant and his deceased brother, on whose estate Godey administered.

The facts as admitted, or in evidence and uncontradicted, are as follows:

For some years previous to 1870, the complainant, Ellis Griffith, and his brother John, lived at a place called Cieneguita (Little Swamp), in Kern County, California, on the westerly side of the Great Valley, at the foot of the Coast

Range of Mountains. They were engaged in raising stock as equal partners. There was plenty of water at the Cieneguita. The region was thinly settled, and there were no railroads in the county. They occupied an extensive stock range, which was known as their range and respected by their neighbors, as is customary among the stock raisers, though all the land was public land and the Griffiths had no title to it, nor any better right than possession gave them. (Fol. 159).

This range was a good one, and was capable of supporting from 1,000 to 3,000 head of stock. Owing to the scarcity of water in the region, the springs at the Cieneguita controlled a large extent of country. The range was therefore valuable and saleable *with the springs*, but worthless without them. (Do.)

At that time the house of Peres & Co., large cattle dealers, was doing business in California, and had an office in San Francisco. One of the partners in that house, Pedro Altube, who was familiar with Kern County, knew the Griffiths and their range, and had long wanted to buy it for his firm. Shortly before John Griffith's death he had offered $12,000 for the property, range and stock. (Fol. 163.)

As early as the 9th of June, 1870, just after John Griffith's death, Altube spoke to Godey about buying it, and then offered to give $12,000 for it as it was (Fol. 163.) It may be added that Altube was aware that the Griffiths had no title to the land; this fact was a matter of public notoriety, for the land had never been surveyed, and was not open to pre-emption. (Fol. 165.)

John Griffith (who appears to have had all the business capacity of his firm), died May 21, 1870, intestate, leaving in possession of the property the complainant, Ellis, a man of little mental capacity, no knowledge of business, and hardly able to read or write (Fol. 260). There was another brother, Morris, who is only mentioned here, because, as one

of the heirs of John, he was deemed a proper party to this suit. He declined, however, to join in it. The Griffiths were aliens. Ellis and Morris were the only heirs at law of John Griffith.

At the time of John's death, the partnership property consisted mainly of cattle and horses (as to the number of which the evidence is conflicting), and the range aforesaid, to which, as against the Government, the Griffiths had no title; such possession as they had has been regarded always as a substantial right—is generally respected—is taxed as property, and is always saleable. It passes by descent and by deed, as would land to which there is a perfect title.

Among the few neighbors of the Griffiths, and perhaps the nearest, were the defendants, Godey and Williams, who lived near each other, at a place called "San Emigdio," some ten or twelve miles south of the Cieneguita. Godey was an old resident of the county, a man of means, and he possessed the full confidence of the complainant. (Fol. 260.)

On the 15th of July, 1870, the complainant declared his intention to become a citizen of the United States. Under the impression that he had thus become a citizen, he filed in the County Clerk's office an affidavit (fol. 432) to the effect that he had taken up 160 acres of the Griffith Range at the Cieneguita, where the springs were. This was done under an old statute of California (Stats. 1852, p. 158). No steps were taken towards procuring title from the United States.

On the next day defendant Godey signed a petition for special letters of administration on the estate of John Griffith, and on the 19th of July he was appointed special administrator. Ellis, as surviving partner and heir of his deceased brother, was entitled, under the laws of California, to three-fourths of all the partnership property, and was, of course, entitled to wind up the firm business; but he consented that Godey should receive full letters of administra- upon John's estate, and in that capacity settle the whole

business; he gave to Godey a written "relinquishment" of his right to administer, which is in the handwriting of Godey's attorney. (Comp'ts Exh. 2. Fol. 309.)

Accordingly, Godey became administrator of John, and took possession of the whole property, except some 40 or 50 cattle, which seem to have been sold previously to Marmolejo, Funk and Crocker. The amended bill alleges that Godey never accounted for these cattle; when the bill was drawn it was supposed that he had sold them after he had become administrator, but this seems to be a mistake, and no point, therefore, is made upon it.

In August, 1870, Godey filed his inventory, as administrator, which did not include the range, nor any land, but, as complainant alleges, only a portion of the stock which had come into his hands as administrator. (Fol. 347.) The property in the inventory was appraised, under the order of the Probate Court, at $3,283.50. On the 27th of August, 1870, Godey, having procured an order from the court, sold the whole as *perishable property* to defendant, Williams, for $2,077.50. This sale was but little advertised, and few bidders attended it. (Fol. 259, 236, 193, 194.)

About twenty cattle, belonging to the partnership, were not included in the inventory, nor sold to Williams. They were in an adjoining county, and were sold on the 29th August, 1870, to the complainant. No question is raised about them.

On the 17th of September, 1870, Ellis made a conveyance of the 160 acres, aforesaid, to Godey, for about $500.

In the proceedings thus far, Ellis seems to have had no adviser, legal or otherwise, except Godey himself. (Fol. 278.)

The pleadings admit that the Griffith property, land and stock, was worth more if sold together than separately.

In September, 1870, all the property of the Griffiths had been sold. Godey had paid about $500 for the Cieneguita,

and Williams $2,077.50 for the personalty; and thus the property for which Altube had offered $12,000, the defendants had bought up—between them—for about $2,600.

As soon as these arrangements had been completed, Godey sent a letter to Altube, offering to sell him, for $13,000, all the property thus acquired by the defendants. Altube, by telegraph, accepted the offer, on condition that a certain squatter was removed. Defendants bought off the squatter for $500, and on the 7th of November, 1870, Altube paid the $13,000, and received a conveyance of the Cieneguita from Godey, and a bill of sale of the stock from Williams. The defendants, Godey and Williams, divided the $13,000 equally between them.

Complainant never knew of Altube's wanting the property until some time after defendants had transferred it to Altube and got the money.

Godey filed his annual account as administrator, 11th August, 1871, in the Probate Court of Kern County. The complainant appears then, for the first time to have consulted counsel; certain exceptions were taken to the account in his name; but they were afterwards withdrawn by his counsel, and never acted on by the Court.

On the 8th July, 1872, the Probate Court made a decree of distribution, whereby it appeared that there was a final balance of $453.05 in the hands of Godey, as administrator; three-fourths of this, ($339.78) was awarded to Ellis, and a receipt given for it by a Mr. Brundage, who appears to have been Ellis' attorney, under a written power. (Fol. 415.)

But Mr. Brundage received no money; all he did was to endorse the amount coming to Ellis as a payment on an alleged note made by complainant and held by Godey. (Fol. 248.)

Thus it appears that the partnership property was all sold off within six months after the dissolution of the firm,

so as to net over $12,000; out of which the complainant, who was entitled to three-fourths of it, has received only about $500.

Points of Law.

The principal questions involved are whether—

(1.) The proceedings in the Probate Court operate as a bar to this suit.

(2.) The Probate Court had any jurisdiction over the partnership property of the two Griffiths.

(3.) The money awarded to Ellis Griffith by the Probate decree of distribution was ever paid to him by Godey. And the legal effect of Brundage's (the attorney's) receipt.

(4.) The affidavit of Ellis Griffith, claiming possession of the Cieneguita, and his conveyance of this tract to Godey, can help the defendants.

(5.) Any part of the $13,000 paid by Altube was paid as a compensation for possible damages feared by defendants (This question, it is to be observed, is not raised by defendant Williams.)

(6.) There was actual fraud on the part of the defendants, or either of them.

(7.) The defendants or either of them, were in a position to buy in the Griffith property, or make profit out of it.

These questions are raised by the amended bill, and the answers and further answers thereto, and the evidence.

The pleadings, including the exceptions to the answers and the rulings of the court upon them, the testimony of the witnesses, and certain of the exhibits, which will be named, are probably all which it will be material for the Court to examine.

The decree below is erroneous because—

1. It should have awarded appellant all the profit made by the defendants out of the Griffith property; or,

2. The profit made by defendants out of the personal property sold to Williams, and afterwards resold to Altube; or,

3. The profit of $1,500 made by Godey out of this resale; or, at least,

4. The amount of $339.78 due appellant under the decree of distribution.

The amount awarded would bear interest at ten per cent. per annum, that being the legal rate in California from April 4, 1870, till January 1, 1873.

Stats. Cal. 1869–'70, p. 699.

I.

NEITHER THE SETTLEMENT OF AN ADMINISTRATOR'S ACCOUNTS, NOR ANY OTHER PROCEEDINGS IN THE PROBATE COURT, AFFECT THE JURISDICTION OF A COURT OF EQUITY OVER HIM IN CASE OF FRAUD.

This was decided in this case by the Circuit Court, and has been held in so many cases, that we think we may regard the question as settled.

Pratt vs. *Northam*, (1828) 5 Mason, 103;
Gould vs. *Gould*, (1844) 3 Story, 536;
Mallett vs. *Dexter*, (1852) 1 Curt. C. C., 183;
Fulton vs. *Whitney*, (1876) 66 N. Y., 557;
Van Bokkelen vs. *Cook*, (1879) 5 Sawyer, 587;
Payne vs. *Hook*, 7 Wall., 425.

Even were there no fraud, the accounts of the administrator would be conclusive only as to the matters appearing in them.

Walls vs. *Walker*, 37 Cal., 426;
Cromwell vs. *Co. of Sac.*, 94 U. S., 356;
Estate of Stott, 52 Cal., 403.

II.

THE PROBATE COURT HAD NO JURISDICTION OF THE SUBJECT MATTER.

All the property in question was partnership property. It belonged to the firm composed of John and Ellis Griffith. John did not own any land, nor a single head of stock in his individual capacity. He was not in possession of the range in his own right; but in right of the firm. John had just such an interest in the firm property as any partner has, viz: the right to one-half of what might remain on the winding up of the business. At the dissolution of the firm by John's death, the whole of the firm property vested in Ellis, as the survivor, and to him alone belonged the right and duty of settling the firm business. This settlement he should have effected without the help of the Probate Court; and he would have so done had he been properly advised. John's administrator had the right to call Ellis to account, to file a bill in equity against him in case of mismanagement, &c., and to receive from him John's share of the final balance. But John's administrator had no right to the possession or management of the joint property.

If, as surviving partner, Ellis could have delegated his power to manage the joint estate, Godey could have wound up the business under a power of attorney; but the Probate Court would have had nothing to do with him.

In the so called "relinquishment" (fol. 309), Ellis, as surviving partner of John, consents that Godey shall, as administrator of John, settle *John's estate*. This is not on its face a consent that Godey should wind up the partnership business, yet that was the way the parties understood it. The effect of this instrument, and of Godey's acts, was to make him a trustee for Ellis, accountable in the same way, and before the same courts, as any other trustee would have been.

Neither this document nor any consent of the parties could give the Probate Court jurisdiction over the settlement of a partnership business. *Mills* vs. *Brown*, 16 Pet., 527. Nor prevent Ellis from asserting his rights. *Ellsworth* vs. *Ellsworth*, 33 Iowa, 164.

The Probate Court could not marshal the assets, it had no machinery or jurisdiction therefor; in fact, it had no equitable jurisdiction whatever. Const'n of Cal., 1849, Art. VI. § 6; *Myers* vs. *Farquharson*, 46 Cal., 200.

It could not divide the estate into funds, and apportion against each its proper burdens. It could not treat the whole partnership property as the property of John Griffith, and pay John's individual debts not out of *his share* of the partnership surplus, but out of the general fund. The result was that Ellis paid a large part of his brother's debts, though John's share was ample to pay them all.

And as a matter of fact the land never came under the cognizance of the Probate Court. It was not inventoried by the administrator. That court did not decide anything about it, nor act upon it in any way. As to the land, then, this suit presents the case *de novo*.

Hence the proceedings of the Probate Court are, we say, of little consequence here, except as affecting the question of fraud. The court of equity must decide as to the defendants' liability precisely as if the Probate Court had done nothing in the premises. Whatever money defendants received on account of the Griffith property, they must be charged with; and whatever money has been fairly paid out, must be allowed them.

III.

THE COMPLAINANT IS NOT ESTOPPED BY THE FACT THAT HIS ATTORNEY RECEIPTED IN HIS NAME FOR THE MONEY AWARDED BY THE DECREE OF DISTRIBUTION, NOR BY HIS FILING OBJECTIONS TO GODEY'S ACCOUNTS.

I. The attorney's authority was given in writing by an instrument purporting to assign to Brundage, one-half of what he (Brundage) might collect from Godey; and to authorize Brundage to collect all demands against Godey and recept for the same, etc. (Fol. 415.)

This was not an assignment by Ellis of his share in the estate. Nor was it an absolute assignment of anything. Brundage's right was contingent on his first getting something from Godey. In legal effect the instrument is only a promise to pay Brundage for his services, one-half of what he might recover.

So far as it is a power, it is a power to receive money, and money only. It is not a power to compromise, nor to adjust accounts, nor to allow offsets. Brundage received no money; he had, therefore, no authority to give a receipt. and the receipt he did give is not binding on the complainant.

Story on Agency, §§ 98–99–103–109, (*n.* 6)–181;
Wittenbrock vs. *Bellmer*, 57 Cal., 12;
Prest., &c. vs. *Watson*, 1 Rawle, 330.

Nothing that Ellis, a *cestui que trust*, could do, had the effect to estop him, unless done with a full knowledge of the facts, &c., and fairly.

Wheeler vs. *Smith*, 9 How., 82;
Michoud vs. *Girod*, 4 How., 561;
Beeson vs. *Beeson*, 9 Pa., 300;
Yellow J. Co. vs. *Stevenson*, 5 Nev., 224.

II. The objections to the account were withdrawn be-

fore a hearing, and they were never passed on by the Probate Court. Hence there is no bar.

Jenkins vs. *Eldridge*, 3 Story, 295;
In re People's, &c., Inst., 19 B. R., 493;
Hough vs. *Waters*, 30 Cal., 309.

IV.

COMPLAINANT'S AFFIDAVIT UNDER THE CALIFORNIA STATUTE OF 1852, IN RELATION TO THE POSSESSION OF THE "CIENEGUITA," AND HIS CONVEYANCE OF THE TRACT TO GODEY, CANNOT AVAIL THE DEFENDANTS.

I. *Nothing was acquired by filing this affidavit.*

The affidavit will be found on fol. 432 of the record The officer before whom it was made gave Ellis to understand "that he was a citizen sufficiently to make the affidavit." (Fol. 272). This circumstance explains why Ellis, who knew no better, swore that he was a citizen under a State statute, which only assumes to prescribe how persons in possession of public lands can maintain their possession in actions at law. The statute was more a practice act than anything else. So far as material its language is as follows:

"*An Act prescribing the mode of maintaining and defending possessory actions on Public Lands in this State.*

"SECTION 1. Any person now occupying and settled upon, or who may hereafter occupy or settle upon, any of the Public Lands in this State, for the purpose of cultivating or grazing the same, may commence and maintain any action for interference with or injuries done to his or her possession of said land, against any person or persons so interfering with or injuring such land or possession. * * *

"SEC. 2. Every such claim to entitle the holder to maintain any action as aforesaid, shall not contain more than one hundred and sixty acres, and the same shall be marked by metes and bounds, so that the boundaries may be readily traced, and the extent of such claim easily known, and no person shall be entitled to maintain any such action for pos-

session of or injury to any claim, unless he or she occupy the same, and shall have complied with the provisions of the third and fourth sections of this act.

"SEC. 3. Any person being a citizen of the United States, claiming any of the public lands in this State, shall file in the office of the Recorder of the County in which such lands are situated, his affidavit setting forth, first: that his or her lines do not embrace more than one hundred and sixty acres of land; second: that he or she has taken no other claim under this act, and to the best of his knowledge and belief, that the said lands are not claimed under any existing title; upon the filing of this affidavit, the recorder shall proceed to record said claim in a book to be kept in his office for that purpose.

"SEC. 4. [Relates to improvements on the land.]

"SEC. 6. On the trial of any such causes, the possession or possessory right of the plaintiff shall be considered as extending to the boundaries embraced by the claim of such plaintiff, so as to enable him or her, according to section third, to have and maintain any action as aforesaid, without being compelled to prove an actual enclosure."

Stats. of Cal. 1852, p. 158.

This statute cannot confer title; the State of California has no title to give, nor does it profess to give any. The land was public land of the United States, unsurveyed and not open to pre-emption. All that complainant did was to file an affidavit in the office of the County Clerk of Kern County. No officer of the United States had anything to do with it. Hence no title was acquired; not even was the foundation of title laid. The affidavit did not amount to a pre-emption claim. There was nothing about it which the land officers of the United States could regard upon a subsequent application to purchase the land.

II. *If any right or interest in the land was acquired under this affidavit, it enured to the benefit of the partnership estate.*

The peculiar character of the country where the land was situated, must be kept in mind. Springs and streams are

few and far apart. The rainfall is so slight, that the land cannot be cultivated without irrigation, and there is not water enough to irrigate. There is grass for pasture, but the cattle must have water, and the water must be within a few miles reach. Land, otherwise good for grazing, is worthless if too far from water; nobody will pre-empt it, and nobody will occupy it even as a stock range. Hence, a good spring of water, with no others near it, "controls" (as the phrase is) the country around it for a radius of several miles. This was the case with the Cieneguita. Whoever owned it would virtually own the whole range. (Fol. 168, 169.)

During John Griffith's lifetime, he and the complainant had possession of the "Cieneguita" and the range adjoining. They occupied and used the land jointly as partners. It was known as their place,—as "the Griffith Ranch,"—"Griffith's Range." (Fol. 295; 304, 266, 184, 181.) It was assessed as property, and they paid taxes on it. (Fol. 428.) Nobody disturbed their possession, for it was the custom of the stock men to respect each others ranges. (Fol. 259, 238.) The "Cieneguita" was of no particular value without the neighboring range; and the range was worthless, without the "Cieneguita." (Fol. 169.) As against everybody but the Government, the Griffiths owned the whole. Nobody but the Government could oust them, for nobody except the Government had a better right to it. This possession was something substantial and valuable. It enabled them to support their stock, and make a living.

The Griffiths could confidently expect that the Government would not disturb them for a long time. For the land was unsurveyed, and not open to pre-exemption. There were no settlers, seeking it for homes. It was in the midst of a wilderness, plenty of land and nobody to occupy it. There was no reason to suppose that it would be surveyed

for years; and if it were, there was no reason to suppose it would be in demand.

The policy of the Government and of the State of California, has always been to leave such settlers undisturbed. The United States has never charged them with rent. And where the land has been unfit for agriculture, far more valuable property than this has remained for years in the possession of the occupants, without title and without rent. The United States has not only permitted this possession, but has sanctioned it by statutes. The first occupant of a mine on the public lands, has, without any title, held it and worked it;—has perhaps made a fortune out of it, and abandoned it at last, worked out and worthless. But the United States never exacted royalty or rent.

Stock-raisers on the plains have occupied large tracts of land in a similar way. Much land in California to day, which has been surveyed and open to pre-emption, is occupied for sheep ranges. It is unfit for cultivation, and the settler who wants a home will not give the Government $1.25 an acre for it. So the occupants are left undisturbed, and the Goverment collects no rent.

Non constat that these lands would ever be thrown open to ordinary pre-emption. Being unfit for cultivation they would not support a farmer, and 160 acres would not be enough for a stock-raiser to make a living on. Congress might see fit to grant such lands in larger tracts, and at a lower price. Witness the instance of the so called "Desert Lands."

Can it be said that such possession is not valuable? A fee simple title is nothing more than the right of use and occupation forever; a technical life estate would be worth no more than the assured right of use and occupation for life. The prospects in 1870 were that this range would not be wanted for settlement for many years; and the population of Kern County is less to-day than it was then.

The Supreme Court of Nevada recognizes value in such claims. One Lynch had possession of public land but no title. Held, that the land could not be taken for a railroad without compensation to him.

V. & T. R. R. vs. *Lynch*, 13 Nev., 92.

But the best test of the value of anything is its saleability. If a thing can be sold for a price, it has value. And its actual value is what it will bring in the market.

Boom Com. vs. *Patterson*, 98 U. S., 408.

No matter what sort of a right or title the possessor has; so long as he can get something for it, it is valuable. The Griffith's right of possession will stand this test. Peres & Co. stood ready to buy it, and they did buy it and paid for it.

Finally, as we have said, these possessory claims have uniformly been recognized as property; they have been taxed as such (fol. 428), and they have passed like any other property by inheritance and sale. This Court and the Supreme Court of California have recognized and upheld the validity of such conveyances.

Sparrow vs. *Strong*, 3 Wall., 97;
Lamb vs. *Davenport*, 18 Wall., 314;
Wilson vs. *Madison*, 55 Cal., 5.

Assuming then that the Griffiths' possession was property, it was necessarily partnership property, because they occupied the land together, and used it for their business as a firm. Whether Godey put it in his inventory or not is of no consequence; his omission so to do is only a link in the chain of facts, that prove his fraudulent design. Being partnership property, it passed to complainant as a surviving partner, and he held it for the benefit of the firm creditors, and of his brother Morris, as well as for his own benefit. In short, he was a trustee, with no power of acquiring an adverse interest in the land. Whatever title or right he

might gain would have enured to the benefit of the partnership fund.

Hoxie vs. *Carr*, 1 Sumn., 182, 183;
Henry vs. *Raiman*, 25 Pa., 354;
Hockenbury vs. *Carlisle*, 5 W. & S., 350.

The defendants knew all the facts in respect to the Griffiths' occupancy. Everybody knew it. The joint possession and the partnership are either admitted or proved. (Fol. 46–47–104–159–168–179–190–205–259–261–282–295–300–304.)

By taking a conveyance of the Cieneguita from Ellis, Godey put neither himself nor Williams in a better position. He was not a *bona fide* purchaser without notice.

III. *Godey was a trustee, and he could not acquire adverse interest in the property.*

He accepted the charge of winding up the firm business, and had taken the firm property into his possession. He was a trustee of the personalty, for he held it and sold it as administrator, and has never questioned that it was partnership property. From what we have already said, there appears to be no doubt that he held the realty interest also. From the moment that he consented to settle the estate, he assumed a fiduciary position. He found the Griffiths in possession of land, and it was not for him to raise doubts about the title. He was bound to guard their interests, to do the best he could with their property. Suppose he had not interfered in the business, is there any doubt that Ellis, as surviving partner, would have had the right to sell all the property, realty as well as personalty, to anybody who would buy? Could not Ellis, in person, have accepted Altube's offer of $12,000 or $13,000 for the stock *and the land?* And if Ellis had done so, can there be any question that he would have been legally entitle to the money?

Godey came into possession and assumed the management of the estate at the request of the owner. If he was not a trustee, what was he?

Huguenin vs. *Beasely*, 14 Ves. Jr., 293–608.

No rule of law is better settled than that a trustee cannot become a purchaser of the trust estate.

Wormley vs. *Wormley*, 8 Wheat., 441.

Godey admits that it was his interest to keep a stranger off the Griffith Range. He says he had heard that some man from the Coast was going to buy Ellis out. He says he feared Altube as a neighbor. (Fol. 230, 237.) If he found his interest conflicting with his duty, he should have resigned. If he continued to act as trustee, his interest should have yielded to his duty.

York Building Co. vs. *Mackenzie*, 8 Brown, P. C.

DeCaters vs. *DeChaumont*, 3 Paige, 180.

IV. *Because Godey took advantage of the complainant's imbecility.*

Ellis was an ignorant, uneducated man, feeble of intellect and unfamiliar with business. These facts and defendant's knowledge of them, are alleged in the amended bill. (Fol. 20.) Defendant, Godey, sought to avoid answering this averment (fol. 48); but, being pressed with exceptions (fol. 93), which were sustained (fol. 100), the averment was finally taken, *pro confesso*, against him. (Fol. 129.) Defendant Williams pursued the same course, and the averment was taken, *pro confesso*, against him also. (Fol. 47–123–130.)

Allore vs. *Jewell*, 94 U. S., 506;

Somes vs. *Skinner*, 16 Mass., 358;

Moore vs. *Moore*, 56 Cal., 89;

Compare language of Sharswood, C. J., in *Cuthbertson's Appeal*, 97 Pa., 171.

V. *Because Ellis was ignorant of the material fact that Altube wanted the range.*

Altube wanted the range independently of the cattle and had offered to pay a large sum for it. And this fact Godey knew, but concealed it from the complainant.

Cumberland Coal Co., vs. *Sherman*, 30 Barb., 574.
McCarthy vs. *Decaix*, 2 Russ. & M., 614, 623.
Perry on Trusts, § 851.

The Court will set aside a deed obtained by persons standing in such relation to the grantor as to give them a controlling, or very strong influence over the grantor, upon slight evidence of improper influence.

Sears vs. *Shafer*, 2 Seld., 268.
Compare *Farnum* vs. *Brooks*, 9 Pick., 213.

VI. *Because of undue influence.*

Ellis had great regard for Godey, and full confidence in him; and was ready to do anything that Godey wanted. Godey made Ellis believe that he (Ellis) got the Cieneguita only by Godey's sufferance, and through Godey's generosity, and that it would be a sort of treason to sell it to anybody else, so long as Godey wanted it. (Fol. 230.)

Cruise vs. *Christopher*, 5 Dana, 181.
Rubidoux vs. *Parks*, 48 Cal., 215.
Casborne vs. *Barsham*, 2 Bear., 78.
Cuthbertson's Appeal, ut supra.

VII. *Because the consideration was inadequate.*

Altube says he valued the Cienegiuta at about $40 an acre, which would make $6,400. (Fol. 172.) Godey put it in at $5,000, when he and Williams sold to Altube. (Fol. 232–3.) Godey paid Ellis for it only about $500.

Crowe vs. *Ballard*, 1 Ves., Jr., 219.
How vs. *Weldon*, 2 Ves., Jr., 520.
Gwynn vs. *Heaton*, 1 Bro., C. C., 10.

"If there is such inadequacy as to show that the person did not understand the bargain he made, or was so oppressed that he was glad to make it, knowing its inadequacy, it will show a command over him which may amount to fraud. If the transaction be such as marks over-reaching on one side and imbecility on the other, it puts the parties in such a situation as to show that it could not have taken place without superior power on the one side over the other." THURLOW, Lord Chancellor, in *Heathcote* vs. *Paignon*, 2 Bro., C. C., 175.

"It may be stated as settled law," says Mr. Justice FIELD, "that whenever there is great weakness of mind in a person executing a conveyance of land, arising from age, sickness, or any other cause, though not amounting to absolute disqualification, and the consideration given for the property is grossly inadequate, a court of equity will, upon proper and reasonable application of the injured party, or his representatives or heirs, interfere and set the conveyance aside." *Allore* vs. *Jewell*, 94 U. S. 511.

VIII. *Because of complainant's condition at the time he made the deed.*

Chester, a disinterested witness, says Ellis was not sober. (Fol. 291.)

Dun vs. *Chambers*, 4 Barb., 376.

IX. *Because of complainant's ignorance of business.*

Ellis knew nothing of business, or of law. He was ignorant of his legal rights in the premises, and he had no friend or legal adviser upon whom to rely.

Pusey vs. *Desbouvrie*, 3 P. Wm's., 315.
Thompson vs. *Eastward*, 2 App., Cas., 215, 234.
Kempson vs. *Ashbee*, 10 Ch., Cas., 15.
Cammack vs. *Lewis*, 15 Wall., 643.
Cockrell vs. *Cholmeley*, 1 Russ. & M., 418, 425.
Marker vs. *Marker*, 9 Hare., 16.
Burrows vs. *Walls*, 5 De G., McN. & G., 233, 253, 254.

The *onus* is on defendants to show that this purchase was fair.

Gibson vs. *Jeyes*, 6 Ves., Jr., 278.

"There are transactions in which there is so great an inequality between the transacting parties—so much of habitual exercise of power on the one side, and habitual submission on the other, that without any proof of the exercise of power beyond that which may be inferred from the nature of the transaction itself, this Court will impute an exercise of undue influence." Per Lord LANGDALE, Master of the Rolls, in *Casborne* vs. *Barsham*, ut supra.

It may be said that Ellis received money from Godey for the Cieneguita, which he has not repaid. True; but this is not a case of "rescission," where a man must restore the thing he buys, before he can get his money back. Here is a *cestui que trust* seeking to set aside a voidable transaction; and to recover what belongs to him, of which the money received is only a small part. It would be absurd for Ellis to return to Godey the money which the decree would order Godey to pay back to him. Anything that the defendants should have credit for, can be allowed them in the accounts.

Rosenberger's Appeal, 26 Pa., 67.
Cammack vs. *Lewis*, ut supra;
Murray vs. *Palmer*, 2 Schoales and Sef., 486;
Heathcote vs. *Paignon*, ut supra;
King vs. *Lagrange*, 50 Cal., 332.

Defendant Williams had full notice of the main facts of this transaction. He knew perfectly well that the land was partnership property; he knew the complainant's infirmities, and he knew of Godey's trusteeship. He stands in no better position then Godey himself.

V.

NONE OF THE $13,000 PAID BY ALTUBE WAS PAID AS COMPENSATION FOR DAMAGES TO DEFENDANTS.

Defendants would have the court believe that the property sold to Altube was of little value; that Altube knew,

it; and that they exacted from him a large additional sum as compensation in advance for the damages they might suffer from the innumerable droves of cattle, which sometime in the future Altube might bring there. But how does this appear? Except the testimony of defendants themselves, there is not a particle of evidence brought forward to prove it. Williams and Godey say they talked over the question of damages between themselves, but nobody else ever heard of it till their answers were filed. They did not mention "damages" to Altube. In fact Altube himself (and nobody knew better than he what the bargain was) expressly denies that damages were thought of. He says: "I considered the cattle and the Cieneguita worth the sum I paid for it at that time, although there was no title to the Cieneguita at that time. * * The agreement between me and Godey was that the land should be purchased without any reference to damage. No reference was made whatever to damages. The purchase was made of the land and stock without any consideration as to damages." (Fol. 165–166.) His willingness to buy the property of John Griffith for $12,000, proves that he had no thought of the neighbors interfering. It is not shown that the consideration of "damages" was expressed in the bill of sale from Williams to Altube. The deed from Godey recites a consideration of $5,000 in gold, and no other. (Fol. 311.) The "damage theory" is inconsistent with their own testimony; for they say they put the Griffith land into the sale at $5,000, and the stock at $8,000. Williams, in his answers, does not set up the "damage theory" at all, and consequently it cannot avail him. Godey sets it up in his answer, but he does not allege that Altube knew of it. (Fol. 61–62.)

Williams, when asked by his own counsel, how they happened to get so large a price, says he does not know why Altube gave so much "*unless it was to establish a stock*

range." Hereupon his memory is jogged with a leading question, and he recalls the "damage theory." (Fol. 189.)

Godey in his answer says that Altube and Peres did not consider the Cieneguita and the Griffith stock as worth over $2,500; but considered that the "range adjoining said lands would be worth to them $10,000." (Fol. 63.) And Godey, in his testimony speaking of Altube and Peres, says: "They had to buy the stock to get the range." (Fol. 233.) Again, in his further answer Williams, says that the high price paid by Altube and Peres, "was for the advantage to their cattle of the range on public lands adjacent to said tract, *the use of which was gained by said purchase*." (Fol. 112.)

In this defendant Williams agrees entirely with us. As has already been seen, the value of the Cieneguita consisted not in itself, but in the fact that with its water it "controlled" the country all about it. (See p. 13, *Ante*.)

If the Griffiths (Ellis and Morris), could have kept the whole purchase money without being liable to Godey and Williams for any of it, how can Godey, a trustee selling the same property for the same sum, and Williams with notice of all the facts helping him—how can these men claim that a part of the purchase money was paid for something else than the property itself?

But the "damage theory" carries its own absurdity on its face. If the property was worth only $3,000 or $4,000 to Altube, he would not have paid more simply to please the defendants. He would have declined to purchase the property. The fact that *they* might lose would hardly induce him to pay three times the value, if *he* gained nothing thereby.

Defendant Williams, as we have seen, cannot avail himself of this defence. The burden is on defendant Godey to establish it, and we submit that he has not done so.

Cook vs. *Howard*, 4 Fish., P. C., 269;
Howe vs. *Williams*, 2 Cliff., 245.

VI.

THE CASE DISCLOSES A PRECONCEIVED PLAN ON THE PART OF THE DEFENDANT GODEY TO DEFRAUD THE COMPLAINANT. IF DEFENDANT WILLIAMS WAS NOT ORIGINALLY A PARTY TO THE SCHEME, HE BECAME SO SOON AFTER ITS INCEPTION; HE HAD NOTICE OF THE FACTS, AND HE SHARED THE PROFITS.

The Griffith cattle range, though not large, was a good one and well stocked. It was known to Pedro Altube, of Peres & Co., of San Francisco, who were large owners and dealers in cattle. He had long wanted it for his firm, and was willing to pay a good price for it. He had offered John Griffith before his death $12,000 for the land and stock (Fol. 163.) Probably Godey heard of this offer at the time. But be that as it may, Altube soon after John's death made the same offer to Godey. Altube cannot fix the date of this second offer, but says it was before Godey became administrator (fol. 170), and a day or so before the cattle which Godey sold to Marmalejo were delivered (Fol. 163, 164). Marmalejo says these cattle were delivered to him June 8, 1870 (Fol. 226). The defendants do not deny that this offer was made. Godey only says: "Altube never made any proposition to buy the Griffith stock *while I was administrator*. I did not see him *during the time I was administrator*." (Fol. 233).

There is nothing to show that the complainant ever heard of Altube's offer, and all the circumstances indicate that he knew nothing about it.

Godey also wanted the Griffith range. He says it was for his interest to own the Cieneguita. As soon as he heard of John Griffith's death, he got it surveyed, intending to locate it for himself (Fol. 228, 238). But moved, as he said, by Ellis' request, and perhaps by the fact that he (Godey), was not in possession and could not make the necessary affidavit under the statute of 1852, and perhaps thinking

that such a proceeding would be too bare-faced, he gave way to Ellis.

Ellis' ignorance and inefficiency are admitted, as well as the fact that he had great confidence in Godey. It appears that he trusted Godey implicitly, and was completely under his influence (Fols. 93, 100, 119, 120 and 130, *et passim*).

As early as June, 1870, probably the scheme of fraud originated in Godey's mind. He knew Altube wanted the property, and would give $12,000 or more for it. The only person standing in his way was the complainant. But Ellis was thoroughly under his control, nor was he the kind of man for Godey to fear.

Ellis wanted Godey to administer on the property. But up to the middle of July, 1870, nothing had been done about it. At this time Godey appears to have decided to administer, but it seems to have occurred to somebody that if he did so, as matters stood, there would be no excuse for leaving the Cieneguita out of his inventory. And it was desirable to separate the land from the personalty, as he could then handle the property better and more to his profit. A pretext was wanted, and somebody seems to have suggested that it would be well to let Ellis file a claim on the property under the statute of 1852, and then Godey could buy him out for a song.

Accordingly Ellis was started off for Havilah, some 80 miles away, and Godey lent him the money for his expenses. (Fol., 229.) Ellis made his affidavit July 15th. Godey says he did not persuade Ellis to this; he tries to create the impression that he did not know what had been done till Ellis's return. (Fol., 229.) Yet Bermudez says Godey was in Havilah July 15th, (fol., 272), and Godey's petition for Special Letters bears date "Havilah, July 16, 1870."

On the 11th of August, 1870, Godey is appointed full administrator, and on the same day he files a petition for leave

to sell the Griffith cattle and other personalty, on the ground that it is "*perishable property.*" August 16th, the court orders that the sale be made, and on the 27th, all the personal property, except a few cattle in another county, is sold to defendant Williams, at about two-thirds of its appraised value, and the sale is then confirmed by the court.

We are not attacking the *formal* correctness of these proceedings of the Probate Court. We mention the circumstances as tending to show that Godey was not acting as an honest trustee.

The statutory definition of " perishable property," is that " which is likely to decrease in value, or become worse by being kept, or is subject to loss or expense, *so that it shall appear to be for the best interest of the estate that the same should be sold without delay.*"

Stats. Cal., 1865,-'66, p. 765.

The best interest of the estate would seem to have required delay, at least long enough to notify Altube. Certainly no reason appears for selling the property in a hurry. There was room enough and feed enough for all the stock. (Fol., 262, 295, 297, 266, 278.) The only expense of keeping the stock was the pay of a vaquero, $30 á month and his board. The range was a good one and large. The feed on this range was better than the others about there, and the average loss of stock less. (Fol., 159, 259, 218.) The testimony differs as to the character of the season of 1870, but the general run of it leads to the conclusion that it was neither good nor bad. Godey himself says only that it was "*rather* a bad year." (Fol., 233.) It did not prove a bad season. Williams lost none of the cattle, though he left them on the Griffith range after he bought them. (Fol., 190, 192.) It was not till after Christmas that any of them died; but at that time of year the old feed is gone and the new feed has not started; and more or less stock always die at that season every year. (Fol., 194.)

Godey, in justifying his hurried sale, says he "didn't care to take chances." Apparently the chance he feared was the chance that Altube might hear of the sale.

In short, no reason appears for selling off the stock in a hurry, which would not have required Godey to sell his own, and have prevented Williams from buying.

But defendants say the stock was "perishable," and that sound business judgment required Godey to sell at once. The conduct of the parties proves that this was a mere pretext. Williams bought the stock and left them where they were. (Fol. 190–297–298.) No step was taken to remove them, nor is there anything to show there was any need of a removal. Godey, who then claimed the land, allowed Williams to use it, without paying rent. (Fol. 298.) The inference is well nigh irresistible that an understanding existed before the sale, that Williams should have the use of the range, till the whole property could be turned over together to Altube.

The sale was ordered to be made on ten day's notice; the law required a notice to be posted up in three public places in the County. The formal requirements of the statute were complied with, but Godey went not a step beyond them. He says he made up his mind to sell the property as soon as he could. (Fol. 236.) Not an advertisement was put in a newspaper; not a hand bill printed; not an attempt to notify the large cattle dealers of San Francisco; not a message to James Crocker, who lived in the county, and was a partner of the largest dealers in the state; no word sent to Altube, who was a large buyer and often in the county. (Fol. 167–259.)

The three notices required by the letter of the statute, were posted up in different parts of a county about as large as Massachusetts, very thinly settled and destitute of railroads. One notice was posted at Havilah, a mining town in the mountains 80 or 90 miles away; another at Walker's

Basin some 10 miles nearer than Havilah, and the third at the store of Hudson & Rosemyer, about 20 miles from the place of sale. (Fol. 374.)

Let us see how the sale was conducted. Godey himself, acted as the auctioneer; besides him, there was nobody present except Williams, the defendant, Rosemyer (Godey's friend and banker), and a few servants and vaqueros. (Fol. 194.) The only persons who could make a *bona fide* bid were Williams and Rosemyer. Only four bids were made (Fol. 228.) The sale was a sham on its face—a mere device for divesting the title.

There is evidence to show that a large part of the stock was never exhibited to the appraisers, nor produced at the sale. Altube, a disinterested witness, says that when he bought the stock, in November, 1870, there were 400 to 500 head of cattle and as many horses, and that Godey told him there were 1,000 head in all. (Fol. 159, 172.) In November, 1870, Godey, selling the property to Altube, valued the stock at $12,000. (Fol. 172.) Why so high, if there were no more than Godey says there were?

Crocker, another disinterested witness (called, too, by the defendant), says that he saw 300 cattle besides the calves. (Fol. 219.) Ellis says there were 400 head of cattle *counted* just before John died. (Fol. 277, 281.) Godey told Ellis at the time of the appraisement to keep quiet about the number of stock, lest the taxes be higher—at least so says Ellis, and Godey does not deny it. (Fol. 264, 276, 259.) After the appraisement, and on the same day, Fleck saw some stock, belonging to the Griffiths, which had not been driven for appraisal. (Fol. 263.) Godey's report of sale (fol. 376) states that 31 horses had not been exhibited to the appraisers, and these were sold to Williams; but, instead of increasing the price of the property, they seem to have had the opposite effect.

Besides Godey himself, defendants' only witnesses as to

the number of stock, are a couple of Mexican vaqueros (Indians) in the habit of obeying orders, and doubtless under Godey's control. (Fol. 260.) They appear to have been instructed as to the numbers "130" and "140," which Morales keeps repeating. Of course, neither of them ever spoke to Godey about the case! (Fol. 209, 213.) Mr. Godey had not sent for Morales to testify, but it was for a different purpose entirely that he came those twenty or thirty leagues to Bakersfield. Had it not been for a happy accident to Morales' rifle, the defendants might have lost his valuable testimony!

The weight of evidence as to the number and value of the stock is in favor of the complainant. It must have been worth two or three or four times as much as Williams paid for it. Even the questionable appraisement, which did not include the 31 horses, put it at over fifty per cent. more than he paid. The inadequacy of the price, coupled with the circumstances of the sale, and the weak-mindedness of the complainant, all of which Williams knew, are enough to stamp his purchase with fraud. That he supposed the sale to him was a fair one, is very hard to believe; it is impossible to believe that Godey, in selling as he did, supposed that he was doing his best for the trust estate.

1 Story Eq. Jur., § 422;
Blaisdell vs. *Stevens*, 16 Vermont, 187.

tly made his report of the sale, wherein he
at he had sold for cash. (Fol. 371, 340.)
.... the court would have confirmed the sale had the report set forth the fact of giving credit. As soon as the sale had been confirmed and the personal property put into William's hands, Godey went to work to buy the Cieneguita from Ellis. Meanwhile he had told this unfortunate complainant not a word about Altube's offer of $12,000.

Godey learned of Williams that some man "from the coast" was proposing to buy the Cieneguita at $500. With great promptness he headed off this interloper, and got a deed himself, before the "coastman," or Altube, could raise the bid. Ellis had no money (fol. 260), and $500 looked large to him. With a trifling addition Ellis accepted it, and executed a deed of the 160 acres to Godey, September 17, 1870.

It is doubtful whether the complainant was sober when he made this deed. The deed does not describe the tract, except by name and reference. (Fol. 307.) Probably it was read to him by the notary; but every lawyer knows the stupefying effect of a legal document upon a dull, inexperienced and uncultivated mind. Unable to read it himself, with no adviser or friend at hand, he unquestionably failed to realize two very material facts, either of which was enough to vitiate the conveyance. (1.) That his deed (if it passed anything) passed the key to several thousand acres of land; (2) that Altube stood ready to give several thousand dollars for the possession of the Cieneguita.

The next step in the scheme was to carry through the sale to Altube. Everything was ready. Godey had a show of record-title to the Cieneguita, and Williams to the stock. The stock was on the range, as it had been when Altube made his offer of $12,000 for it in June. We quote Godey's own testimony: "After I bought the Ellis possessory right and sold the Griffith stock to Williams, I went to Havilah and got Henry Bequette to write me a letter to Pedro Altube, saying if he wanted to buy the Aguajito I would sell it to him for $4,000; if he wanted to buy the Cieneguita, which I owned as my own property, he could have it for $5,000, and the Griffith cattle and horses he could have for $8,000, or all together for $17,000; if he wished to buy, to answer by telegraph, as I might do something else in case he did not buy," &c. (Fol. 231.)

Altube accepted, on condition that a certain squatter was removed. This was accomplished by the outlay of only $500, and then the whole property, range and all, was transferred to Altube for $13,000. The transaction was thus concluded on the 7th of November, less than six months after John Griffith's death. According to Godey and Williams the stock was put in at $8,000, and the land at $5,000; but as if to complete the evidence of their conspiracy, the money they got was shared equally between them, $6,500 to each.

With these valuations of the stock and land Altube had no concern. He paid a lump price for the whole property.

Defendants, in their answers, formally admit that the property was "worth more together than in any other way, and was worth much less if sold separately." (Fol. 63, 112.) Yet when Godey is ostensibly acting as a trustee, he sells it separately; when the defendants are consulting their own interest, they sell all together. Is not this a confession of fraud? *Hill* vs. *Shoemaker*, 1 McArthur, 305.

The last act in the play was to get a receipt for the balance under the decree of distribution. The motive for giving such a receipt, when Ellis could gain nothing by it, is not disclosed; nor is there any explanation of the withdrawal of the objections to the administrator's accounts. In these somewhat singular proceedings, as in all the others, every thing seemed to work for defendant's benefit.

If further proof were needed to establish the fact of Williams' complicity in the fraud, and that there was a perfect understanding between the defendants, we might invite attention to the following facts:

Williams had notice of Ellis's rights as a partner, set forth as they were in the petition for the order of sale under which Williams acquired all the right he had in the property he bought. Indeed, when pressed by exceptions, he admits the fact (Fol. 362, 104.)

Story Eq. Jur. § 400.

He also admits that he knew Ellis' mental weakness and ignorance. These things were enough to put him on inquiry. *Blaisdell* vs. *Stevens*, ut supra.

Williams seems to have betrayed as much anxiety as anybody to keep outsiders from buying. On the day of the auction sale, or the next day, he hears that Ellis is proposing to sell the Cieneguita to a Santa Barbara man, and at once he posts off and tells Godey all about it (Fol. 185, 230).

Williams told Funk in September, 1870, that Altube wanted to buy the Griffith property (Fol. 299). If he did not know it before he had bought the stock, he certainly found it out very soon thereafter.

Williams left the stock on the Griffith range without paying Godey, the administrator, any rent therefor.

Williams had no money at the time to pay for what he had bought at the auction. He says he had not spoken with Godey about the purchase (fol. 188); but although the sale was advertised "for cash" (fol. 372, 373), he seems to have been aware that he could get credit, and that any kind of security would be accepted; for he took with him one Krause, a laborer in his employ, to be surety for him! (Fol. 186).

Godey gave credit and exacted no security. Three weeks after the sale Williams paid $600, and Godey did not ask for the balance of the money because, as he says, "I knew he would get money from Altube." And after the trade with Altube the balance was paid (Fol. 240).

There is nothing but the testimony of Godey to show that Williams ever paid any of this purchase money out of his own pocket. Williams does not say he did, nor does he allude to the $600 payment.

In the negotiation with Altube, Williams took no part, but left it all to be managed by Godey (Fol. 188).

Though they "put in" the land at $5,000 and the stock

at $8,000 in the sale to Altube, they shared the $13,000 equally.

Godey was still administrator while his transactions with Altube were going on. Possibly Godey was afraid of Williams; he could not have carried through the scheme without Williams' knowledge, and it may have been to buy his silence that he let him into the plot. There was no one else to fear. Rosemyer was Godey's friend and banker, and there were no other neighbors to uncover or to oppose his designs.

What weight is to be given to the testimony of the defendants? In the first place they are interested witnesses; in the next place there is the significant fact, that of thousands of dollars which this ignorant and helpless complainant ought to have received, he actually got almost nothing, while the defendants got nearly all.

Their main reliance is on the testimony of defendant Godey himself. But so many witnesses contradict him, and he so contradicts himself, that the effect of his testimony is seriously impaired.

1. He says he paid the $339 (coming to Ellis under the decree of distribution) to Brundage (Fol. 234). But Brundage, his own witness, swears no money was paid (Fol. 248).

2. Godey says that he got no money at all from Williams still three weeks after the sale of the personalty, and that the bulk of the purchase money was not paid till after the sale to Altube, some three months after Williams had purchased. (Fol. 240.) Yet, in his sworn return to the Probate Court, Godey states that he had sold to Williams for cash. (Fol. 371.)

3. On the point of the number of stock, he is contradicted by Altube, Fleck, Crocker and the complainant.

4. On the "damage theory" he is contradicted by Altube. (Fol. 164, 166.)

5. On the point of Ellis' intemperate habits, he is contradicted by Chester, the Notary. (Fol. 231, 291.)

6. He says "Altube never made any proposition to buy the Griffith stock while I was administrator." (Fol. 233.) But he was administrator when he was negotiating with Altube in the fall of 1870, and at the time when the sale to Altube was completed, and he continued to be such till 1872.

Giving to Godey's testimony its due weight, the inference from all the evidence is that Godey planned the fraud, and that Williams came into it with his eyes open to help Godey, who could not manage it alone, in carrying out the scheme. *Scott* vs. *Umbarger*, 41 Cal., 410.

VII.

NEITHER OF THE DEFENDANTS WAS IN A POSITION TO BUY IN FOR HIMSELF THE GRIFFITH PROPERTY, OR MAKE PROFIT OUT OF IT.

Had the complainant been a man of average capacity, probably this case would never have arisen. But he has rested under a grave disadvantage; the same imbecility which made him an easy victim, has rendered him inefficient in asserting and maintaining his rights. The very means which he needed for the sinews of war, has all been captured and withheld by his opponents. (See defendant's question, fol. 182.)

But on the admitted facts of the case, leaving out of view those which are controverted, defendant ought to be held liable. For in July, 1870, Ellis Griffith was the legal owner of all the property in question, as surviving partner. He was himself a trustee; both defendants knew this. The sale of the stock to defendant Williams passed no title, for the Probate Court had no jurisdiction to sell it, and Williams must be held to know this. If this sale did pass title, then

Williams took the property with knowledge of the trust and of complainant's imbecility, and the trust attached to the property in his hands.

Story Eq. Jur., § 395;
Perry on Trusts, § 217–225.

And Williams knew, *probably before he paid any of the purchase money and certainly before he paid it all*, that Godey the trustee, proposed to re-sell the whole property to Altube at a large profit to himself. (Fol. 188, 299, 240.) Thus he had notice of the fraud before he parted with his money, and he is chargeable.

Scott vs. *Umbarger*, ut supra.

So if Godey acquired any rights in the property under the conveyance of the Cieneguita from Ellis, he acquired them with notice, and he held them as trustee. When defendants sold to Altube, they sold as trustees, and the trust attached to the proceeds in their hands.

Flagg vs. *Mann*, 2 Sumn., 565;
Perry on Trusts, § 843, 844.

And their liability is both joint and several. *Heath* vs. *Erie, R. R.*, 8 Blatchf., 347; see also *Emery* vs. *Parrott*, 107 Mass., 100.

That Godey is individually liable seems to admit of no doubt whatever. His knowledge of the partnership relation —of the imbecility and ignorance of the complainant—of the fact that the partnership property could be made to realize at least $12,000, and his concealment of the fact, and finally the fiduciary position he occupied,—these things place him in a situation where the law will not permit him to make a profit for himself. He was in duty bound to turn the property to the best account for the benefit of his *cestui que trust;* to sell it (if he sold at all) for the best price he could get.

We have never heard yet that an administrator or other trustee may avail himself of a defect of title to appropriate trust property to himself.

The case of *Fox* vs. *Mackreth*, was almost identical with this. A trustee had agreed with his *cestui que trust* to buy the latter's estate for £40,000. *Afterwards*, but before conveyance, the trustee had negotiated a sale to a third party for £50,000, which he received. The *cestui que trust* recovered the surplus from the trustee. This case was first heard before the Master of the Rolls, and decided against the trustee; on appeal, the Lord Chancellor and the House of Lords affirmed the decree. *Fox* vs. *Mackreth*, 2 Bro. C. C., 400.

An agent authorized to sell a vessel for $90,000, took it himself for that sum although he had at the time a larger offer; he pocketed the difference, but was compelled to account for it. *DeBussche* vs. *Alt*, 8 Ch. Div., 286.

It does not admit of question that Ellis confided in Godey, as he would not have done had he not considered him his trustee, and believed him to be acting in good faith. As a consequence doubtless of this trust, Godey was able to play him a trick, which otherwise he could not have accomplished. The law forbids such actions, not only on the part of strict trustees, but wherever a fiduciary relation exists. As a trustee of land cannot buy an outstanding title and hold it adversely, so an agent trusted with the care of land to which the principal has no title, cannot buy it for himself; in other words, title has nothing to do with the matter, if the relation of trust and confidence has once come into being.

This Court and the Supreme Court of California have both held this doctrine.

In *Hardenbergh* vs. *Bacon*, there was no title in the principal, and the agent was not employed for the purpose of getting title. He was simply employed to look after certain property, to which the principal made some claim, and

he abused his trust by acquiring title in his own name and holding it adversely. Mr. Justice Rhodes, in the opinion, says:

"Where property, or the claim to property, is the subject to which the agency relates, we do not understand it to be requisite that the principal must hold a perfect title, or an equitable title, that will enable him to acquire the legal title." *Hardenbergh* vs. *Bacon*, 33 Cal., 376.

In *Ringo* vs. *Binns*, the principal (Binns) had never had title. Even his inchoate claim had lapsed before the agency was created; but thinking he had some rights in the land, Binns sent Ringo to take care of it. Ringo took care of it, as the wolf took care of the lamb, and got title in his own name. But the Court declared him a trustee, on the ground thus stated by Mr Justice WAYNE.

"The proposition laid down by this Court is that if an agent discovers a defect in the title of his principal, he cannot misuse it to acquire a title for himself; and if he does, that he will be held as a trustee holding for his principal." 10 Pet., 281.

Take another view; assume, for the sake of argument, that the Probate Court had jurisdiction, and that Godey was legally administrator; he sold certain personal property to Williams for $2,077.50. When it was re-sold by Williams to Altube for $8,000, $6,500 of the money went to Williams, and $1,500 to Godey. Here we find an administrator realizing a profit to himself out of the trust property. He is indirectly buying at his own sale.

Davoue vs. *Fanning*, 2 Johns, Ch., 260.

Godey is clearly liable for this $1,500, if not for the whole advance. Precisely this case arose in Pennsylvania. *Rosenberger's Appeal*, 26 Pa., St. 67, already cited. And compare; *Guerrero* vs. *Ballerino*, 48 Cal., 118; *Parker*

vs. *McKanna*, 10 Ch., App., Cas., 96; *Romaine* vs. *Hendrickson*, 27 N. J., Eq., 162.

The Statute of California, in force at the time, provided that "No executor or administrator shall directly or indirectly, purchase any property of the estate he represents."

{ Prob. Act of 1851, § 193.
{ Stats. Cal., 1851, p. 472.

Finally, even supposing this Court hold that the defendants are innocent of all fraud, Godey, according to the decree of distribution in the Probate Court, on his own showing, owed this complainant in 1872, $339.78. This fact is alleged in the amended bill, and admitted by Godey's answer. (Fol. 28–66.) His defence is payment, and the *onus* is on him to establish it.

Howe vs. *Williams*, 2 Cliff., 245.
Cook vs. *Howard*, 4 Fish., P. C., 269.

But he has failed to prove payment, and the testimony of his own witness, Brundage, shows affirmatively that this money never has been paid. (Fol. 248.) For this sum Godey is liable, in any aspect of the case.

We respectfully submit that the decree below ought to be reversed.

STETSON & HOUGHTON,
For Appellant.

San Francisco, *October, 1884.*

FRANK W. HACKETT,
Of Counsel.